



Council Meeting: May 21, 2013

SUBJECT: Approve Agreement with MP Homestead Park Associates, L.P., a Legal Entity of MidPen Housing Corporation, for a Loan of \$5 Million in Housing Mitigation Funds to Rehabilitate Homestead Park Apartments.

BACKGROUND

In February 2012, the City released a Request for Proposals (RFP) for affordable housing projects to be funded with Housing Mitigation funds in FY 2012-13. The City received two proposals, one of which, MidPen's Proposal to rehabilitate Homestead Park, was selected for funding. The other applicant revoked its application. On June 19, 2012, Council allocated \$5 million in Housing Mitigation funds to MidPen Housing Corporation to support the rehabilitation of Homestead Park Apartments, located at 1601 Tenaka Place. The conditional funding award to MidPen included a reservation of Housing Mitigation funds for up to one year, contingent upon securing all other required funding for the project, including matching funds of at least 25% of the project cost.

Property Description

Built in 1973, Homestead Park was Sunnyvale's first subsidized housing development for low-income families and individuals. The property consists of 211 apartments and townhouses ranging in size from studios to four bedroom units.

In partnership with the City, MidPen has been in the process of renovating the 211-unit property for over seven years to improve and preserve this affordable rental housing. The renovation project to be funded with the new \$5 million loan will be the third and last phase, and will include repairs and upgrades to the exteriors of nine buildings (approximately 78 units) and a complete renovation of the interiors of all 211 units, incorporating green building and solar features.

The total rehabilitation cost is estimated at approximately \$6,715,000, as shown on Table A.

Table A

HOMESTEAD DEVELOPMENT BUDGET	
HARD COSTS	
Site Work	\$ 181,500
Rough & Finished Carpentry	\$ 640,000
Thermal & Moisture	\$ 110,000
Doors & Windows	\$ 351,500
Finishes	\$ 444,900
Furnishings	\$ 950,300
Mechanical & Plumbing	\$ 895,600
Electrical	\$ 1,269,700
General Contractor Overhead & Profit	\$ 739,600
Subtotal	\$ 5,583,100
Hard Cost Contingency (10%)	\$ 484,400
TOTAL HARD COST	\$ 6,067,500
SOFT COSTS	
Design	\$ 10,000
Construction/Project Management	\$ 335,000
Builder's Risk	\$ 83,700
Permits	\$ 121,400
Legal- Owner's Cost	\$ 5,000
Title & Closing	\$ 5,000
Land Appraisal	\$ 9,000
Resident Expenses	\$ 50,000
Soft Cost Contingency (5%)	\$ 28,400
TOTAL SOFT COST	\$ 647,500
TOTAL PROJECT COST	\$ 6,715,000
HOMESTEAD DEVELOPMENT BUDGET SOURCES	
Sources	
City of Sunnyvale Housing Mitigation Funds	\$ 5,000,000
CA Solar Initiative-Thermal*	\$ 500,000
Homestead Property Replacement Reserve/MidPen Loan	\$ 1,215,000
TOTAL SOURCES	\$ 6,715,000

*Over the counter rebate program for expenses related to solar thermal. No funding commitment needed.

EXISTING POLICY

Sunnyvale General Plan, Housing Element

Goal B: Maintain and enhance the condition and affordability of existing housing in Sunnyvale.

Policy B.3: Strengthen multi-family neighborhoods through partnership with non-profit housing organizations in the acquisition and rehabilitation of older residential properties and maintenance as long-term affordable housing.

Housing and Community Revitalization Sub-element:

Goal C.2.b: Continue the rehabilitation loan program for single, multifamily and mobile homes.

Implementation Plan Item #7: Assist at least one large multi-family rental project with rehabilitation, acquisition and/or preservation.

2010-2015 Sunnyvale Consolidated Plan:

Goal A: Assist in the creation, improvement, and preservation of affordable housing for lower-income and special needs households.

DISCUSSION

MidPen has met all of the conditions of the 2012 Conditional loan commitment. The Housing Mitigation Loan Agreement, included as **Attachment A** to this Report, is consistent with the appropriation approved by Council in 2012, and sets forth the terms of the City loan, including financing terms and general requirements.

The terms include: a 55-year term at zero percent interest, with payment deferred until the end of the term. The City plans to increase the interest rate to three percent simple in three years when the initial tax credit compliance period ends, and MidPen will buy out the tax credit investor. MidPen has agreed to this in the attached letter, included as **Attachment B**.

Also included in the Agreement are general performance requirements for the rehabilitation project and for ongoing operations. A regulatory agreement, provided as an exhibit to the loan agreement, will restrict all of the units as very low-income units.

This project has been determined to be exempt from the requirements of the California Environmental Quality Act and qualifies for a Class 1 CEQA exemption as it involves rehabilitation of existing structures. There are no federal funds in this project requiring federal environmental review under the National Environmental Policy Act (NEPA).

FISCAL IMPACT

This project will not impact the City's General Fund. The proposed funding for this project is included in the FY 2012 Projects Budget for the Housing

Mitigation fund. The Housing Fund was created to finance affordable housing projects such as the rehabilitation of Homestead Park.

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, at the Sunnyvale Senior Center, Community Center and Department of Public Safety; and by making the agenda and report available at the Sunnyvale Public Library, the Office of the City Clerk and on the City's Web site.

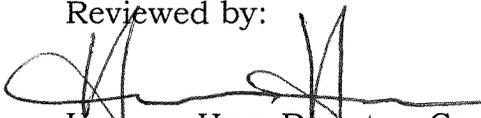
The proposed assistance to this project was reviewed and recommended by the Housing and Human Services Commission on April 20, 2012 and approved by Council on June 19, 2012.

RECOMMENDATION

Staff recommends that the City Council approve the attached Loan Agreement with MP Homestead Park Associates, L.P., a legal entity of MidPen Housing Corporation in substantially the form provided and authorize the City Manager to execute the agreement and associated loan documents in final form as approved by the City Attorney.

Approval of the Housing Mitigation Agreement between the City and MP Homestead Park Associates, L.P. will enable rehabilitation and preservation of Homestead Park Apartments as affordable rental housing for very low-income households for at least 55 years, and will ensure the property is physically sound. This project would not be possible without approval of the loan agreement by the City.

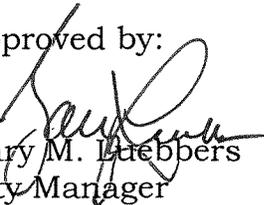
Reviewed by:



Hanson Hom Director, Community Development
Suzanne Isé, Housing Officer

Prepared by: Katrina L. Ardina, Housing Programs Analyst

Approved by:



Gary M. Luebbers
City Manager

Attachments

- A. Housing Mitigation Loan Agreement between the City of Sunnyvale and MP Homestead Park Associates, L.P.
- B. Letter from MidPen Housing Corporation

ATTACHMENT A

**HOUSING MITIGATION LOAN AGREEMENT BETWEEN THE
CITY OF SUNNYVALE AND MP HOMESTEAD PARK
ASSOCIATES, L.P.**

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Sunnyvale
Community Development Department
P.O. Box 3707
Sunnyvale, CA 94088-3707
Attn: Housing Officer

No fee for recording pursuant to
Government Code Section 27383

**LOAN AGREEMENT
CITY OF SUNNYVALE
HOUSING MITIGATION FUND
HOMESTEAD PARK**

This Loan Agreement (the "Agreement") is made as of _____, 2013 by and between the CITY OF SUNNYVALE, a municipal corporation (the "Lender"), and MP HOMESTEAD PARK ASSOCIATES, a California Limited Partnership (the "Borrower").

RECITALS

A. The Borrower intends to rehabilitate a portion of that certain real property located at 1601 Tenaka Place in the City of Sunnyvale, California (the "Property"), for the purpose of preserving affordable rental housing for Low-Income households whose incomes are 60 percent or less of the Area Median Income ("Low-Income households"), as determined by HUD for Santa Clara County or as otherwise provided herein.

B. The Project will consist of the substantial rehabilitation of nine (9) buildings with a total of seventy-eight (78) apartment units, or such greater number of units as may be economically feasible, within the total project of 211 units (the "Project").

C. As a condition of the Loan, the Borrower, will execute a regulatory agreement (the "Regulatory Agreement") which will regulate the Property for the term of the Loan to ensure that the units are occupied by and affordable to Low-Income Households.

D. The Lender will oversee the Project to ensure that it conforms to the scope of work, project budget, project timeline, and that it meets all Lender and state housing and building codes.

NOW THEREFORE, in consideration of the mutual agreements, obligations, and representations, and in further consideration for the making of the Loan, the Borrower and Lender hereby agree as follows:

ARTICLE 1 LOAN TERMS

1.1 Loan Agreement. The Lender agrees to loan and Borrower agrees to borrow an amount not to exceed Five Million Dollars (\$5,000,000) of Sunnyvale Housing Mitigation Funds (the "Loan"), subject to the conditions and terms of this Agreement. The Loan shall be evidenced by a promissory note bearing zero percent (0%) interest, with a term of fifty-five (55) years (the "Note") executed by Borrower, payable as provided in the Note, and secured by a deed of trust (the "Deed of Trust") and Regulatory Agreement recorded against the Property. Copies of the Note, Deed of Trust and Regulatory Agreement are attached hereto as Exhibits B, C and D. This Agreement, the Note, the Deed of Trust and the Regulatory Agreement shall be collectively referred to as the "Loan Documents".

1.2 Conditions of Funding. The obligation of the Lender to disburse Loan proceeds under this Agreement is subject to the following conditions:

(a) There exists no Default nor any act, failure, omission or condition that would constitute a default under this Agreement;

(b) The Borrower holds title to the Property or is acquiring title simultaneously with the disbursement of the Loan proceeds;

(c) A title insurer reasonable acceptable to the Lender is unconditionally and irrevocably committed to issuing an LP-1- ALTA Lender's Policy of title insurance insuring the priority of the Deed of Trust in the amount of the Loan, subject only to such exceptions and exclusions as may be reasonably acceptable to the Lender, and containing such endorsements as the Lender may reasonably require.

(d) Escrow instructions ("Escrow Instructions") prepared by the parties shall be delivered to and accepted by the title company. The Escrow Instructions shall be consistent with the terms of this Agreement and shall provide, among other matters, that prior to the Closing Date (as defined below):

- (1) This Agreement shall be executed by the Borrower and the Lender and delivered to the Lender;
- (2) The Note shall be executed by Borrower and delivered to the Lender;
- (3) The Deed of Trust shall be executed by Borrower and recorded in the records of the County of Santa Clara (the "County");
- (4) The Regulatory Agreement shall have been executed by Borrower and the Lender and recorded in the records of the County;

(e) Any approval of this Agreement, the Note, the Deed of Trust, or the Regulatory Agreement contemplated by this Agreement that is required under the Loan Documents shall be delivered to the Lender, and any certification required by the Lender with respect to the procurement of any such approval shall be delivered by Borrower to the Lender.

(f) Borrower shall provide the Lender with a resolution approving and authorizing execution of this Agreement and all documents contemplated hereby and with such other documentation required by the Lender regarding Borrower's status and authority to enter into this transaction.

(g) Borrower shall provide the Lender with certificates of insurance, in form and with insurers admitted in California and acceptable to the Lender, evidencing compliance with the insurance requirements, as provided by the Lender on or prior to the Closing Date, and upon demand by Lender at any time subsequent. If requested by the Lender, Borrower shall also provide complete copies of the required insurance policies and bonds.

(h) The closing contemplated by this Section and the Escrow Instructions shall occur within thirty (30) days of the date of execution of this Agreement, unless the parties agree to a different closing date (the "Closing Date").

(i) The Lender has determined that the undisbursed proceeds of the Loan, together with other funds or firm commitments for funds that the Borrower has obtained in connection with the Project, are not less than the amount that is necessary to pay for the Project and to satisfy all of the covenants contained in this Agreement and the Regulatory Agreement.

(j) The Lender has received a written draw request from the Borrower, including certification by the Borrower that the condition set forth in Section 1.4(a) is satisfied, setting forth the expenses previously incurred for which reimbursement is requested in connection with the eligible costs of the Project, as set forth in the Project Budget, included herein as Exhibit E. Reimbursement requests shall specify the amount of funds needed, and a copy of the bill or invoice covering the applicable cost. The Borrower shall apply all disbursements for the purpose requested.

(k) Borrower shall provide evidence of matching funds to Lender. The matching funds are to be 25% of the Housing Mitigation Fund Loan principal amount of Five Million Dollars (\$5,000,000).

1.3 Term of Agreement. The term of this Agreement, shall commence upon the execution of this Agreement and shall be due and payable in full upon the earliest of: (i) fifty-five (55) years from the date of this Note, (ii) the refinancing of the senior loan encumbering the Project, (iii) the sale or other transfer of the Project, or (iv) the transfer of the limited partner interest.

1.4 Use of Funds.

- (a) The Borrower shall use the Loan Funds for the reimbursement of eligible costs incurred by the Project (the "Permitted Use"), as described in the Project Budget, attached hereto as Exhibit E.
- (b) The Borrower agrees to be additionally liable for repayment of any disbursed Loan proceeds not utilized for the Permitted Use.

1.5 Regulatory Agreement. In connection herewith, the Borrower shall execute and record a Regulatory Agreement which shall regulate all units of the Property to ensure that the units are occupied by and affordable to Low-Income Persons for not less than fifty-five (55) years.

1.6 Subordination. The Deed of Trust and/or Regulatory Agreement may be subordinated to deed(s) of trust securing the loans in the amounts set forth in the Project Budget, if any, or to existing deeds of trust securing existing financing (each, a "Senior Loan"), subject to the following conditions:

(a) Borrower must demonstrate to the Lender's reasonable satisfaction that subordination of the Deed of Trust and/or Regulatory Agreement is necessary to secure adequate financing for the Project, including the operation of the Property as affordable rental housing, as required by the Loan Documents. To satisfy this requirement, Borrower must provide to the Lender, in addition to any other information reasonably required by the Lender, evidence demonstrating that the proposed amount of the Senior Loan is necessary to provide adequate financing to ensure the viability of the Project including any project costs not included in the Budget, Exhibit E (for the Lender Loan), and adequate financing for the Project would not be available without the proposed subordination or that such loans are existing loans that would not approve the Lender Loan without subordination.

(b) The subordination agreement(s) must be structured to minimize the risk that the Deed of Trust and/or Regulatory Agreement would be extinguished as a result of a foreclosure by the holder of the Senior Loan. To satisfy this requirement, the subordination agreement must provide the Lender with adequate rights to cure any defaults by Borrower, including: (i) providing the Lender or its successor with copies of any notices of default at the same time and in the same manner as provided to Borrower; and (ii) providing the Lender with a cure period of at least sixty (60) days to cure any default.

(c) The subordination(s) described in this section may be effective only during the original term of the Senior Loan and any extension of its term approved in writing by the Lender.

(d) No subordination may limit the effect of the Deed of Trust and/or Regulatory Agreement before a foreclosure, nor require consent of the holder of the Senior Loan to exercise of any remedies by the Lender under the Loan Documents.

(e) Upon a determination by the City Manager that the conditions in this Section have been satisfied, the City Manager or his/her designee will be authorized to execute the approved subordination agreement without the necessity of any further action or approval.

ARTICLE 2

GENERAL REQUIREMENTS

2.1 Rental Agreement. Leases of units must comply with the following requirements:

- (a) Tenant leases must be for not less than one year unless by mutual agreement between tenant and owner.
- (b) Any termination of tenancy or refusal to renew a lease, with the exception of evictions or non-renewals for non-payment of rent, must be preceded by thirty (30) days written notice specifying the grounds for the action by the owner.
- (c) Leases shall be in writing and may not contain the following prohibitive clauses:
 - (1) Agreement by the tenant to be sued.
 - (2) Statement that owner can confiscate tenant property.
 - (3) Statement excusing owner from legal responsibility.
 - (4) Statement that owner does not have to give notice when instituting a lawsuit.
 - (5) Agreement by the tenant to waive rights to a jury trial.
 - (6) Agreement by the tenant to waive rights to appeal a court decision.
 - (7) Agreement by the tenant to pay attorneys' fees if the tenant wins a court case.
 - (8) Agreement by the tenant to waive rights to civil court proceeding to defend eviction.

2.2 Property Management. During the term of this Agreement, Borrower shall maintain the Property in good repair and in a neat, clean and orderly condition and shall comply with all of the terms and provisions of the City permits issued for the Project. The Borrower must keep and maintain the Property in compliance with all applicable laws and Lender

requirements for the duration of this Agreement, and shall not cause or allow the Property to be in violation of any federal, state or local laws, ordinances or regulations.

2.3 Occupancy Procedures. The Borrower shall adopt written tenant selection policies and criteria for the units that:

- (a) Are consistent with the purpose of providing housing for Low-Income Persons;
- (b) Are reasonably related to program eligibility and the applicants' ability to perform the obligations of the lease; and
- (c) Provide for:
 - (i) The selection of tenants from a written waiting list in the chronological order of their application, insofar as is practicable; and
 - (ii) The prompt written notification to any rejected applicant of the grounds for any rejection.

2.4 Security Deposits. Any security deposits collected by the Borrower or Borrower's agent shall be kept separate and apart from all other funds of the Property in a trust account with depository insured by the Federal Deposit Insurance Corporation, or other comparable federal deposit insurance program, and shall be held and disbursed in accordance with California law. The balance of such amount shall at all times equal or exceed the aggregate of all outstanding obligations under said account, plus accrued interest thereon.

2.5 Hazard and Liability Insurance. The Borrower shall at all times cause the Property to be insured against loss by fire, flood, if in a flood zone, and such other hazards, casualties, liabilities and contingencies, and in such amounts and for such periods as are reasonably acceptable to the Lender. All insurance policies and renewals thereof shall be issued by a carrier and in a form acceptable to the Lender. Property insurance policies shall name the Lender as an additional insured, as approved by the Lender. The foregoing shall not limit the obligations of Borrower pursuant to the Deed of Trust.

2.6 Hold Harmless. The Borrower and its successors in interest agree to indemnify, defend, and hold harmless the Lender and its agents, employees, volunteers and officers from any and all claims, losses, liabilities or causes of action (including reasonable attorney's fees) arising from or in connection with the Borrower's construction, management, maintenance or operation of the Project; provided, however, the Borrower's obligations to indemnify and hold harmless shall not apply in the event of the Lender's gross negligence or willful misconduct.

2.7 Annual Report. The Borrower shall file with the Lender an annual report, no later than 120 days following the end of each calendar year. The report shall contain a certification by

the Borrower as to such information as the Lender may then require including, but not limited to, the following:

- (a) The substantial physical defects in the Property, including a description of any major repair or maintenance work undertaken or needed in the previous and current fiscal years. Such statement shall describe what steps the Borrower has taken in order to maintain the Property in a safe and sanitary condition in accordance with applicable housing and building codes.
- (b) The occupancy of the Property including:
 - (1) the verified income of each current household; and
 - (2) the current rent charged each household and whether these rents include utilities.
- (c) A summary of the information received from the recertification of tenants' incomes.
- (d) Other information reasonably required by the Lender, including the fiscal condition of the Borrower showing a financial statement for the previous fiscal year that includes a balance sheet and a profit and loss statement indicating any surplus or deficit in operating accounts; a detailed, itemized listing of income and expenses; the amount of any fiscal reserves and the total amount of Residual Receipts received. Such financial statement shall be prepared in accordance with the requirements of the Lender. The Lender may require that the financial statement be audited at the Borrower's expense by an independent certified public accountant acceptable to the Lender or other person designated by the Lender.

2.8 Lender Review and Inspections.

- (a) Upon not less than 2 business days' notice to the Borrower, the Lender may at any time during the term of this Agreement, enter and inspect the physical premises and inspect all accounting records pertaining to the development or operation of the Project. Upon request by the Lender, the Borrower shall notify occupants of upcoming inspections of their units in accordance with state law.
- (b) The Lender may request any other information that it deems necessary to monitor compliance with requirements set forth in this Agreement. Such information shall be promptly provided by the Borrower.
- (c) Borrower shall preserve and make available its records related to receipt and use of Loan proceeds until the expiration of five years from the date of

the final disbursement of Loan proceeds, or for such longer period, if any, as is required by law. Borrower shall preserve and make available its records related to occupancy and rent requirements until the expiration of five years from the end of the calendar year to which such records pertain, or for such longer period, if any, as is required by law. If this Agreement is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for a period of five years from the date of any resulting final settlement.

2.9 Restrictions on Sale, Encumbrance, and Other Acts.

- (a) The Borrower shall not make any sale, encumbrance, hypothecation, assignment, pledge, conveyance, or transfer in any form of the Project or of any its interest therein, except with the prior written approval of the Lender.
- (b) In the event of a transfer to a wholly-controlled affiliate of MidPen Housing Corporation, Lender approval rights shall be limited to adjusting terms of the Loan and transferee's willingness to assume all obligations.
- (c) The unpaid principal balance of the Loan together with any unpaid interest due thereon shall be due and payable in full upon: 1) a refinancing, sale, transfer or other disposition of the Property or any portion thereof, unless such disposition of the Property has been first approved in writing by the Lender, as evidenced by the signature of the City Manager, and approved as to form by the Lender's Attorney; or 2) the declaration by the Lender of a default as described and subject to the cure periods in Article 3 below.
- (d) The Borrower shall not permit the use of the Property for any purpose other than that permitted by this Agreement without the prior written approval of the Lender.
- (e) The Lender may approve a sale, transfer or conveyance provided that all of the following conditions are met:
 - (1) the Borrower is in compliance with the Regulatory Agreement or the sale, transfer or conveyance will result in the cure of any existing violations of the Regulatory Agreement;
 - (2) the transferee agrees to assume all obligations of the Borrower pursuant to the Regulatory Agreement; and
 - (3) any transferee demonstrates to the Lender's satisfaction that it has the management and financial capacity to own and operate the Property.

2.10 Assignment of Lender Rights. The Lender retains the right at its sole discretion to assign all or part of its rights under this Agreement for the purpose of ensuring compliance and enforcement of the Borrower's duties and obligations hereunder. In addition, the Lender may designate an agent to act on its behalf in monitoring compliance and enforcing the provisions hereof.

2.11 Environmentally Impaired. In the event that any portion of the Property is determined to be "environmentally impaired" (as that term is defined in California Code of Civil Procedure Section 726.5(e)(3)) or to be an "affected parcel" (as that term is defined in California Code of Civil Procedure Section 726.5(e)(1)), then, without otherwise limiting or in any way affecting the Lender's or the trustee's rights and remedies under the Deed of Trust, the Lender may elect to exercise its rights under California Code of Civil Procedure Section 726.5(a) to (1) waive its lien on such environmentally impaired or affected portion of the Property and (2) exercise (a) the rights and remedies of an unsecured creditor, including reduction of its claim against the Borrower to judgment, and (b) any other rights and remedies permitted by law. For purposes of determining the Lender's right to proceed as an unsecured creditor under California Code of Civil Procedure Section 726.5(a), the Borrower shall be deemed to have willfully permitted or acquiesced in a release or threatened release of hazardous materials, within the meaning of California Code of Civil Procedure Section 726.5(d)(1), if the release or threatened release of hazardous materials was knowingly or negligently caused or contributed to by any lessee, occupant, or user of any portion of the Property and the Borrower knew or should have known of the activity by such lessee, occupant, or user which caused or contributed to the release or threatened release. All costs and expenses, including (but not limited to) reasonable attorneys' fees, incurred by the Lender in connection with any action commenced under this paragraph, including any action required by California Code of Civil Procedure Section 726.5(b) to determine the degree to which the Property is environmentally impaired, plus interest thereon at the lesser of ten percent (10%) or the maximum rate permitted by law, until paid, shall be added to the indebtedness secured by the Deed of Trust and shall be due and payable to the Lender upon its demand made at any time following the conclusion of such action.

ARTICLE 3

DEFAULTS AND REMEDIES

3.1 Event of Default.

Each of the following shall constitute a "Default" and "Event of Default" by Borrower under this Agreement:

(a) Failure to Complete Scope of Work. Failure of Borrower to complete the Project by the date provided in Exhibit F "Scope of Work."

(b) Failure to Make Payment. Failure to repay the principal and any interest on the Loan within ten (10) days of receipt of written notice from the Lender that such payment is due pursuant to the Loan Documents.

(c) Breach of Covenants. Failure by Borrower to duly perform, comply with, or observe any of the conditions, terms, or covenants of any of the Loan Documents, and such failure having continued uncured for thirty (30) days after receipt of written notice thereof from the Lender to the Borrower or, if the breach cannot be cured within thirty (30) days, the Borrower shall not be in breach so long as Borrower is diligently undertaking to cure such breach and such breach is cured within ninety (90) days; provided, however, that if a different period or notice requirement is specified under any other section of this Article 3, the specific provisions shall control.

- i. Upon the occurrence of an event of default, Lender shall provide to Borrower and Borrower's limited partner written notice of said occurrence, and Borrower and its limited partner shall have thirty (30) days to cure. If, after the time provided in this subparagraph (b), Borrower or its limited partner has not cured the default, or Lender has not waived its rights under the Note, the entire unpaid balance, together with all other sums then payable under this Note, shall, at the option of Lender, become immediately due and payable upon written notice by Lender to Borrower without further demand. Notice to Borrower and Borrower's limited partner shall be at the addresses specified in the Deed of Trust.

(d) Default Under Other Loans. Failure to make any payment or perform any of Borrower's covenants, agreements, or obligations under the documents evidencing and securing the Project Budget following expiration of all applicable notice and cure periods.

(e) Insolvency. A court having jurisdiction shall have made or entered any decree or order (i) adjudging Borrower to be bankrupt or insolvent, (ii) approving as properly filed a petition seeking reorganization of Borrower or seeking any arrangement for Borrower under the bankruptcy law or any other applicable debtor's relief law or statute of the United States or any state or other jurisdiction, (iii) appointing a receiver, trustee, liquidator, or assignee of Borrower in bankruptcy or insolvency or for any of their properties, (iv) directing the winding up or liquidation of Borrower, if any such decree or order described in clauses (i) to (iv), inclusive, shall have continued unstayed or undischarged for a period of ninety (90) days; or (v) Borrower shall have admitted in writing its inability to pay its debts as they fall due or shall have voluntarily submitted to or filed a petition seeking any decree or order of the nature described in clauses (i) to (iv), inclusive. The occurrence of any of the events of Default in this paragraph shall act to accelerate automatically, without the need for any action by the Lender, the indebtedness evidenced by the Note.

(f) Assignment; Attachment. Borrower shall have assigned its assets for the benefit of its creditors or suffered a sequestration or attachment of or execution on any substantial part of its property, unless the property so assigned, sequestered, attached or executed upon shall have been returned or released within ninety (90) days after such event or, if sooner, prior to sale pursuant to such sequestration, attachment, or execution. The occurrence of any of the events of default in this paragraph shall act to accelerate automatically, without the need for any action by Lender, the indebtedness evidenced by the Note.

(g) Suspension; Termination. Borrower shall have voluntarily suspended its business.

(h) Condemnation. The condemnation, seizure, or appropriation of all or the substantial part of the Property.

(i) Unauthorized Transfer. Any transfer other than as permitted by Section 2.9.

(j) Representation or Warranty Incorrect. Any Borrower representation or warranty contained in this Agreement, or in any application, financial statement, certificate, or report submitted to the Lender in connection with any of the Loan Documents, proving to have been incorrect in any material respect when made.

3.2 Remedies.

The occurrence of any Default hereunder following the expiration of all applicable notice and cure periods will, either at the option of the Lender or automatically where so specified, relieve the Lender of any obligation to make or continue the Loan and shall give the Lender the right to proceed with any and all remedies set forth in this Agreement and the Loan Documents, including but not limited to the following:

(a) Acceleration of Note. The Lender shall have the right to cause all indebtedness of the Borrower to the Lender under this Agreement and the Note, together with any accrued interest thereon, to become immediately due and payable. The Borrower waives all right to presentment, demand, protest or notice of protest or dishonor. The Lender may proceed to enforce payment of the indebtedness and to exercise any or all rights afforded to the Lender as a creditor and secured party under the law including the Uniform Commercial Code, including foreclosure under the Lender Deed of Trust. The Borrower shall be liable to pay the Lender on demand all reasonable expenses, costs and fees (including, without limitation, reasonable attorney's fees and expenses) paid or incurred by the Lender in connection with the collection of the Loan and the preservation, maintenance, protection, sale, or other disposition of the security given for the Loan.

(b) Specific Performance. The Lender shall have the right to mandamus or other suit, action or proceeding at law or in equity to require Borrower to perform its obligations and covenants under the Loan Documents or to enjoin acts on things which may be unlawful or in violation of the provisions of the Loan Documents.

(c) Right to Cure at Borrower's Expense. The Lender shall have the right (but not the obligation) to cure any monetary default by Borrower under a loan other than the Loan. The Borrower agrees to reimburse the Lender for any funds advanced by the Lender to cure a monetary default by Borrower upon demand therefor, together with interest thereon at the lesser of the maximum rate permitted by law or ten percent (10%) per annum from the date of expenditure until the date of reimbursement.

3.3 Right of Contest.

Borrower shall have the right to contest in good faith any claim, demand, levy, or assessment the assertion of which would constitute a Default hereunder. Any such contest shall be prosecuted diligently and in a manner unprejudicial to the Lender or the rights of the Lender hereunder.

3.4 Remedies Cumulative. No right, power, or remedy given to the Lender by the terms of this Agreement or the Loan Documents is intended to be exclusive of any other right, power, or remedy; and each and every such right, power, or remedy shall be cumulative and in addition to every other right, power, or remedy given to the Lender by the terms of any such instrument, or by any statute or otherwise against Borrower and any other person. Neither the failure nor any delay on the part of the Lender to exercise any such rights and remedies shall operate as a waiver thereof, nor shall any single or partial exercise by the Lender of any such right or remedy preclude any other or further exercise of such right or remedy, or any other right or remedy. Any material breach by the Borrower of any representation, warranty or covenant hereunder, which is not cured within thirty days (30) after notice thereof given by the Lender or, where cure is not possible within thirty (30) days, whose cure is not commenced within thirty days and diligently prosecuted to completion shall constitute an Event of Default.

3.5 Lender's Remedies. Upon the happening of an Event of Default, the Lender may pursue any remedy allowed at law or in equity, including but not limited to, accelerating payment under the Note or applying to any State court for specific performance of this Agreement and the Regulatory Agreement.

ARTICLE 4 MISCELLANEOUS PROVISIONS

4.1 Conflict of Interest. No employee, agent, consultant, officer, elected or appointed official or member of the Lender has or may obtain a personal or financial interest in or benefit from the Borrower or the Project or in any contract or subcontract or agreement, or the proceeds thereof, relating to the Project or the Property itself, either for themselves or for those with whom they have family or business ties, during their tenure with Lender or one year thereafter.

4.2 Nondiscrimination. All of the units (excluding the manager unit) shall be available for occupancy on a continuous basis to members of the general public who are eligible households and income eligible. The Borrower shall not give preference to any particular class or group of persons in renting the units, or any part of the Property, except to the extent that the units are required to be leased to Low-Income Households. The Borrower shall not discriminate against any prospective tenant in the use, enjoyment, occupancy, conveyance, lease, sublease, or rental of any part of the Project on the basis of race, color, ancestry, national origin, religion, sex, sexual preference, marital status, source of income, physical or mental disability, Acquired Immune Deficiency Syndrome (AIDS) or AIDS-related conditions (ARC), or any other arbitrary basis. The Borrower shall otherwise comply with all applicable local, state, and federal laws concerning discrimination in housing.

4.3 Hold Harmless.

- (a) The Borrower hereby agrees to, and shall, hold Lender, its elective and appointive boards, council members, officers, agents and employees, harmless from any liability for damage or claims for damage for personal injury, including death, as well as from claims for property damage which may arise from the Borrower's operations under this Agreement, whether such operations be by the Borrower or subcontractor, or by any one of more persons directly or indirectly employed by, or acting as agent for, the Borrower or any subcontractor. The Borrower agrees to, and shall, hold the Lender, its elective and appointive boards, council members, officers, agents and employees harmless from any suits or actions at law or in equity for damages caused, or alleged to have been caused, by reason of any of the aforesaid operations.
- (b) The Borrower agrees to provide all costs of any necessary legal defense and all attorneys' fees incurred in defending any claim, whether or not actually filed in any court.

4.4 Amendment. This Agreement may be amended only by a writing signed by authorized representatives of the Lender and the Borrower. The City Manager or his/her designee shall be authorized to act on behalf of the Lender.

4.5 Notice. Any notice required or authorized under this Agreement shall be effective if, and only if, in writing and if, and only if, mailed, postage prepaid, by registered or certified mail, to the party in question at the address shown below:

Lender: City of Sunnyvale
Housing Officer
P. O. Box 3707
Sunnyvale, CA 94088-3707

With a copy to: City of Sunnyvale
City Attorney
456 West Olive Avenue
Sunnyvale, CA 94088-3707

Borrower: MP Homestead Park Associates
303 Vintage Park Drive, Suite 250
Foster City, CA 94404

Attn: PRESIDENT

With a copy to Trustor's investor limited partner: (AEGON)

Bay Area Community Investments I, LLC
c/o AEGON USA Realty Investors, LLC
4333 Edgewood Road NE
Cedar Rapids, IA 52499
Attention: LIHTC Reporting
Facsimile: 319-355-8030
Email: lihtcreporting@aegonusa.com

4.6 No Waiver. No failure to enforce or delay in enforcing or exercising any right or remedy available under this Agreement shall impair the exercise of such right or remedy or the exercise of a similar right or remedy on a subsequent occasion.

4.7 Severability. Should any provision of this Agreement be found invalid by a court or other body of competent jurisdiction, said invalidity or ineffectiveness shall not affect the validity of the remaining provisions which shall remain in force to the maximum extent possible.

4.8 Titles and Headings. The titles and headings in this Agreement are for convenience only and shall not be construed to affect the meaning or construction of any provision of this Agreement.

4.9 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

4.10 Attorneys' Fees. The prevailing party shall be entitled to receive the amount of its legal expenses, including reasonable attorneys' fees, expert legal fees and other legal costs and expenses, in the event of any legal action brought under or to enforce the provisions of this Agreement.

4.11 No Third Party Beneficiary. This Agreement shall not be construed or deemed to be an agreement for the benefit of any third party or parties, and no third party or parties shall have any claim or right of action hereunder for any cause whatsoever.

4.12 No Pledging of Lender's Credit. Under no circumstances shall the Borrower have the authority or power to pledge the credit of Lender or incur any obligation in the name of Lender. Borrower shall save and hold harmless Lender, its City Council, its officers, employees, and boards and commissions for expenses arising out of this Agreement.

4.13 Venue. In the event that suit shall be brought by any Party to this Agreement, the Parties agree that venue shall be exclusively vested in the state courts of the County of Santa Clara, or where otherwise appropriate, exclusively in the United States District Court, Northern District of California, San Jose, California.

4.14 Judicial Reference. It is the desire and intention of the parties to agree upon a mechanism and procedure under which any claim, controversy, breach or dispute arising out of this Agreement, including, without limitation, the interpretation of any term or provision of this

Agreement, or any claim, controversy, breach or dispute arising out of the work, services or obligations performed under a this Agreement, including, without limitation, the design, specifications, surveying, planning, supervision, testing, or observation of construction or construction of an improvement to, or survey of, the Project, (individually, referred to as a “Dispute”, and collectively referred to as “Disputes”) will be resolved in a prompt and expeditious manner. Accordingly, all or any such Disputes, whether seeking damages or equitable relief, shall be subject to the procedures set forth in this section. Any unresolved Disputes shall be heard by a referee pursuant to the provisions of the California Code of Civil Procedure, Sections 638-645.1, inclusive, and as set forth in this section:

- 4.14.1 Procedure for Appointment. The venue of any proceeding brought under this section shall be in Santa Clara County, California (unless changed by order of the referee). The party seeking to resolve the Disputes shall file in court and serve on the other party a complaint describing the matters in dispute. Service of the complaint shall be as prescribed by law. At any time after service of the complaint, any party may request the designation of a referee to try the dispute. Thereafter the parties shall use their best efforts to agree upon the selection of a referee. If the parties are unable to agree upon a referee within ten (10) days after a written request to do so by any party, then any party may petition the presiding judge of the superior court in which the action is filed or the superior court judge to whom the matter has been assigned (the “Judge”) to appoint a referee. For the guidance of the Judge making the appointment of the referee, the parties agree that the person so appointed shall be a retired judge or a lawyer experienced in the subject matter of the dispute.
- 4.14.2 Appointment of Proposed Referee as Judge Pro Tem. In recognition that (1) there is no action pending as of the date of this Agreement in which the parties thereto can stipulate to the appointment of a temporary judge, (2) there is no statute authorizing such a stipulation in advance of the filing of an action in the superior court, and (3) the appointment of a referee as a temporary judge (“judge pro tem”) under Article VI, Section 21 of the California Constitution and California Rules of Court Rule 244, would be preferable to a general reference, the parties hereby covenant that in the event of the filing of an action in the superior court to resolve all or any disputes, the parties thereto shall use their best efforts to stipulate that the proposed referee be appointed as a temporary judge under Article VI, Section 21 of the California Constitution.
- 4.14.3 Decision and Jurisdiction of Referee. The referee or judge pro tem shall decide all issues of fact and law submitted by the parties for decision in the same manner as required for a trial by court, including all law and motion matters, ex parte matters and discovery disputes. The referee or judge pro tem shall try and decide any or all Disputes according to all of the substantive, evidentiary and procedural law of the State of California. When the referee or judge pro tem has decided the Disputes, the referee or judge pro tem shall prepare a statement of decision and judgment. The judgment entered by the Superior Court shall be appealable in the same manner as any other judgment.

- 4.14.4 Discovery. Discovery shall be allowed and conducted under the supervision of the referee or judge pro tem pursuant to the provisions of the California Code of Civil Procedure and the California Rules of Court.
- 4.14.5 Cooperation. The parties shall diligently cooperate with one another and the person appointed as referee or judge pro tem to resolve each and every Dispute and shall perform such acts as may be necessary to obtain a prompt and expeditious resolution of all such Disputes. If either party refuses to diligently cooperate, and the other party, after first giving notice of its intent to rely on the provisions of this subparagraph, incurs additional expenses or attorneys' fees solely as a result of such failure to diligently cooperate, the referee or temporary judge may award such additional expenses and attorneys' fees to the party giving such notice, even if such party is not the prevailing party in the dispute.
- 4.14.6 Allocation of Costs. The cost of the reference shall be borne equally by Borrower and Lender.
- 4.14.7 Special Disclosure. Notice: By signing this Agreement, Lender and Borrower agree to have all and any Disputes decided by judicial reference in accordance with California Code of Civil Procedure, Sections 638-645.1, and Lender and Borrower are giving up any rights Lender and Borrower might possess to have the Dispute litigated by a jury trial. If Lender or Borrower refuses to submit to judicial reference after agreeing to this provision, such party may be compelled to submit to judicial reference. The parties' agreement to this judicial reference provision is voluntary.

IN WITNESS WHEREOF, the Lender and the Borrower have executed this Agreement as of the date first set forth above.

LENDER:

City of Sunnyvale, a
municipal corporation

By: Gary Luebbers
Its: CITY MANAGER

BORROWER:

MP HOMESTEAD PARK ASSOCIATES
a California Limited Partnership

By: MP Preservation, Inc., a California
nonprofit public benefit corporation, Its
General Partner

By: Matthew O. Franklin
Its: ASSISTANT SECRETARY

APPROVED AS TO FORM:

City Attorney

STATE OF CALIFORNIA)
)
COUNTY OF _____)

On _____, before me, _____, Notary Public, personally appeared _____, proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public

STATE OF CALIFORNIA)
)
COUNTY OF _____)

On _____, before me, _____, Notary Public, personally appeared _____, proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public

EXHIBIT A
LEGAL DESCRIPTION

LEGAL DESCRIPTION

Real property in the City of Sunnyvale, County of Santa Clara, State of California, described as follows:

Parcel One:

Lots 1, and 3, so designated and delineated on the Map of Tract No. 5292 Homestead Plaza Subdivision, recorded July 5, 1973, in Book 326 of Maps, pages 1, Santa Clara County Records.

Parcel Two:

Parcel B, as shown upon that certain Parcel Map recorded December 23, 2002 in Book 757 of Maps, Pages 1 and 2, Santa Clara County Records.

APN: 323-41-001 (Affects Lot 1 of Parcel One)

323-41-003 (Affects Lot 3 of Parcel One)

323-41-005 (Affects Parcel Two)

EXHIBIT B
FORM OF NOTE

**PROMISSORY NOTE
CITY OF SUNNYVALE
HOUSING MITIGATION FUND
HOMESTEAD PARK**

\$5,000,000

Sunnyvale, California

_____ 1, 2013

FOR VALUE RECEIVED, the undersigned MP Homestead Park Associates, a California Limited Partnership (the "Borrower") hereby promises to pay to the City of Sunnyvale, a municipal corporation (the "Holder"), a principal amount of up to Five Million Dollars (\$5,000,000), plus interest thereon pursuant to Section 2 below.

1. Borrower's Obligation. This promissory note (the "Note") evidences the Borrower's obligation to pay the Holder the principal amount of up to Five Million Dollars (\$5,000,000) or such additional amounts as may be loaned by the Holder to Borrower pursuant to the Loan Agreement between the Borrower and the Holder of even date herewith (the "Loan Agreement"). The Holder shall loan such funds to Borrower to finance certain construction costs in connection with rehabilitation of the Property pursuant to the Loan Agreement. All capitalized terms not otherwise defined in this Note shall have the meanings set forth in the Loan Agreement.

2. The principal balance of this Note shall bear simple interest from the date of recordation of the Deed of Trust until repaid in full at zero percent (0%); provided, however, if a Default occurs, interest on the principal balance shall begin to accrue, as of the date of Default and continuing until such time as the Loan funds are repaid in full or the Default is cured, at the default rate of the lesser of ten percent (10%), compounded annually, or the highest rate permitted by law.

3. Term and Repayment Requirements. The term of this Note (the "Term"), shall commence with the date of this Note and shall be due and payable in full upon the earliest of: (i) fifty-five (55) years from the date of this Note, (ii) the refinancing of the senior loan encumbering the Project, (iii) the sale or other transfer of the Project, or (iv) the transfer of the limited partner interest. This Note shall be due and payable as set forth in Section 1.3 of the Loan Agreement.

4. No Assumption. This Note shall not be assumable by the successors and assigns of Borrower without the prior written consent of the Holder.

5. Security. This Note is secured by a Deed of Trust and Security Agreement (the "Deed of Trust"), of even date herewith, wherein the Borrower is the Trustor and the Holder is the Beneficiary, covering the Property.

6. Terms of Payment.

(a) All payments due under this Note shall be paid in currency of the United States of America, which at the time of payment is lawful for the payment of public and private debts.

(b) All payments on this Note shall be paid to Holder at Community Development Department, Housing Division, City of Sunnyvale, P. O. Box 3707, Sunnyvale, California 94088-3707, Attention: Housing Officer or to such other place as the Holder of this Note may from time to time designate.

(c) All payments on this Note shall be without expense to the Holder, and the Borrower agrees to pay all costs and expenses, including re-conveyance fees and reasonable attorney's fees of the Holder, incurred in connection with the payment of this Note and the release of any security hereof.

(d) Notwithstanding any other provision of this Note, or any instrument securing the obligations of the Borrower under this Note, if, for any reason whatsoever, the payment of any sums by the Borrower pursuant to the terms of this Note would result in the payment of interest which would exceed the amount that the Holder may legally charge under the laws of the State of California, then the amount by which payments exceeds the lawful interest rate shall automatically be deducted from the principal balance owing on this Note, so that in no event shall the Borrower be obligated under the terms of this Note to pay any interest which would exceed the lawful rate.

7. Default.

(e) Any of the following shall constitute an event of default under this Note:

(i) Any failure to pay, in full, any payment required under this Note within ten (10) days of written notice that such payment is due;

(ii) Any failure in the performance by the Borrower of any term, condition, provision or covenant set forth in this Note subject to the notice and cure period set forth in Section 3.1(c) of the Loan Agreement;

(iii) The occurrence of any event of default under the Loan Agreement, the Deed of Trust, the Regulatory Agreement, or other instrument securing the obligations of the Borrower under this Note or under any other promissory notes hereafter issued by the Borrower to the Holder pursuant to the Loan Agreement or the Deed of Trust, subject to notice and cure periods, if any, set forth therein.

(b) Upon the occurrence of an event of default, Holder shall provide to Borrower and Borrower's limited partner written notice of said occurrence, and Borrower and its limited partner shall have thirty (30) days to cure. If, after the time provided in this subparagraph (b), Borrower or its limited partner has not cured the default, or Holder has not waived its rights under the Note, the entire unpaid balance, together with all other sums then payable under this Note, shall, at the option of Holder, become immediately due and payable upon written notice by Holder to Borrower without further demand. Notice to Borrower and Borrower's limited partner shall be at the addresses specified in the Deed of Trust.

(c) The failure to exercise the remedy set forth in Subsection 7(b) above or any other remedy provided by law upon the occurrence of one or more of the foregoing events of default shall not constitute a waiver of the right to exercise any remedy at any subsequent time in respect to the same or any other default. The acceptance by Holder hereof of any payment which is less than the total of all amounts due and payable at the time of such payment shall not constitute a waiver of the right to exercise any of the foregoing remedies or options at that time or at any subsequent time, or nullify any prior exercise of any such remedy or option, without the express consent of the Holder, except as and to the extent otherwise provided by law.

8. Waivers.

(a) The Borrower hereby waives diligence, presentment, protest and demand, and notice of protest, notice of demand, and notice of dishonor of this Note. The Borrower expressly agrees that this Note or any payment hereunder may be extended from time to time, and that the Holder may accept further security or release any security for this Note, all without in any way affecting the liability of the Borrower.

(b) No extension of time for payment of this Note or any installment hereof made by agreement by the Holder with any person now or hereafter liable for payment of this Note shall operate to release, discharge, modify, change or affect the original liability of the Borrower under this Note, either in whole or in part.

(c) The obligations of the Borrower under this Note shall be absolute and the Borrower waives any and all rights to offset, deduct or withhold any payments or charges due under this Note for any reason whatsoever.

9. Miscellaneous Provisions.

(a) All notices to the Holder or the Borrower shall be given in the manner and at the addresses set forth in the Loan Agreement, or to such addresses as the Holder and the Borrower may hereinafter designate.

(b) The Borrower promises to pay all costs and expenses, including reasonable attorney's fees, incurred by the Holder in the enforcement of the provision of this Note, regardless of whether suit is filed to seek enforcement.

(c) This Note may not be changed orally, but only by an agreement in writing signed by the party against whom enforcement of any waiver, change, modification or discharge is sought.

(d) This Note shall be governed by and construed in accordance with the laws of the State of California.

(e) The times for the performance of any obligations hereunder shall be strictly construed, time being of the essence.

(f) This document, together with the Loan Documents, contains the entire agreement between the parties as to the Loan. It may not be modified except upon written consent of the parties.

10. Nonrecourse. This Note shall be nonrecourse to the Borrower and its partners.

MP HOMESTEAD PARK ASSOCIATES,
a California Limited Partnership

By: MP Preservation, Inc., a California nonprofit
public benefit corporation,
Its General Partner

By: Matthew O. Franklin
Its: ASSISTANT SECRETARY

EXHIBIT C
FORM OF DEED OF TRUST

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Sunnyvale
Community Development Department
P.O. Box 3707
Sunnyvale, California 94088-3707
Attention: Housing Officer

No fee for recording pursuant to
Government Code Section 27383

APN: **323-41-001, 323-41-003, 323-41-005**

DEED OF TRUST WITH ASSIGNMENT OF RENTS, SECURITY AGREEMENT, AND
FIXTURE FILING

(Homestead Park Housing Mitigation Loan)

THIS DEED OF TRUST AND SECURITY AGREEMENT ("Deed of Trust") is made as of XXXX 1, 2013, by and among MP Homestead Park Associates, a California Limited Partnership ("Trustor"), Old Republic Title Company, a California corporation ("Trustee"), and the City of Sunnyvale, a municipal corporation ("Beneficiary").

FOR GOOD AND VALUABLE CONSIDERATION, including the indebtedness herein recited and the trust herein created, the receipt of which is hereby acknowledged, Trustor hereby irrevocably grants, transfers, conveys and assigns to Trustee, IN TRUST, WITH POWER OF SALE, for the benefit and security of Beneficiary, under and subject to the terms and conditions hereinafter set forth, Trustor's fee interest in the property located in the County of Santa Clara, State of California, that is described in the attached Exhibit A, incorporated herein by this reference (the "Property").

TOGETHER WITH all interest, estates or other claims, both in law and in equity which Trustor now has or may hereafter acquire in the Property and the rents;

TOGETHER WITH all easements, rights-of-way and rights used in connection therewith or as a means of access thereto, including (without limiting the generality of the foregoing) all tenements, hereditaments and appurtenances thereof and thereto;

TOGETHER WITH any and all buildings and improvements of every kind and description now or hereafter erected thereon, and all property of the Trustor now or hereafter affixed to or placed upon the Property;

TOGETHER WITH all building materials and equipment now or hereafter delivered to said property and intended to be installed therein;

TOGETHER WITH all right, title and interest of Trustor, now owned or hereafter acquired, in and to any land lying within the right-of-way of any street, open or proposed, adjoining the Property, and any and all sidewalks, alleys and strips and areas of land adjacent to or used in connection with the Property;

TOGETHER WITH all estate, interest, right, title, other claim or demand, of every nature, in and to such property, including the Property, both in law and in equity, including, but not limited to, all deposits made with or other security given by Trustor to utility companies, the proceeds from any or all of such property, including the Property, claims or demands with respect to the proceeds of insurance in effect with respect thereto, which Trustor now has or may hereafter acquire, any and all awards made for the taking by eminent domain or by and proceeding or purchase in lieu thereof of the whole or any part of such property, including without limitation, any awards resulting from a change of grade of streets and awards for severance damages to the extent Beneficiary has an interest in such awards for taking as provided in Paragraph 4.1 herein; and

TOGETHER WITH all of Trustor's interest in all articles of personal property or fixtures now or hereafter attached to or used in and about the building or buildings now erected or hereafter to be erected on the Property which are necessary to the complete and comfortable use and occupancy of such building or buildings for the purposes for which they were or are to be erected, including all other goods and chattels and personal property as are ever used or furnished in operating a building, or the activities conducted therein, similar to the one herein described and referred to, and all renewals or replacements thereof or articles in substitution therefor, whether or not the same are, or shall be attached to said building or buildings in any manner.

All of the foregoing, together with the Property, is herein referred to as the "Security". To have and to hold the Security together with acquittances to the Trustee, its successors and assigns forever.

FOR THE PURPOSE OF SECURING:

A. Payment of just indebtednesses of Trustor to Beneficiary as set forth in the Note (defined in Article 1 below) until paid or cancelled. Said principal and other payments shall be due and payable as provided in the Note. Said Note and all its terms are incorporated herein by reference, and this conveyance shall secure any and all extensions thereof, however evidenced; and

B. Payment of any sums advanced by Beneficiary to protect the Security pursuant to the terms and provisions of this Deed of Trust following a breach of Trustor's obligation to advance said sums and the expiration of any applicable cure period, with interest thereon as provided herein; and

C. Performance of every obligation, covenant or agreement of Trustor contained herein and in the Loan Documents (as defined below).

D. Payment of any future advances by Beneficiary to Trustor.

AND TO PROTECT THE SECURITY OF THIS DEED OF TRUST, TRUSTOR COVENANTS AND AGREES:

ARTICLE 1:
DEFINITIONS

In addition to the terms defined elsewhere in this Deed of Trust, the following terms shall have the following meanings in this Deed of Trust:

Section 1.1 The term "Loan Agreement" means that certain Loan Agreement between Trustor and Beneficiary, of even date herewith, providing for the Beneficiary to loan to the Trustor up to Five Million Dollars (\$5,000,000) for rehabilitation of the Property as described in Exhibit F, "Scope of Work" of the Loan Agreement.

Section 1.2 The term "Loan Documents" means this Deed of Trust, the Note, the Loan Agreement, the Regulatory Agreement, and any other debt, loan or security instruments between Trustor and the Beneficiary relating to the Property.

Section 1.3 The term "Note" means that certain promissory note in the amount of Five Million Dollars (\$5,000,000) of even date herewith executed by the Trustor in favor of the Beneficiary, the payment of which is secured by this Deed of Trust. (Copies of the Note are on file with the Beneficiary and terms and provisions of the Note are incorporated herein by reference.)

Section 1.4 The term "Principal" means the aggregate of the amounts required to be paid under the Note.

Section 1.5 The term "Regulatory Agreement" means the Regulatory Agreement and Declaration of Restrictive Covenants by and between the Trustor and Beneficiary of even date herewith and recorded against the Property concurrently herewith.

ARTICLE 2:
MAINTENANCE AND MODIFICATION OF
THE PROPERTY AND SECURITY

Section 2.1 Maintenance and Modification of the Property by Trustor.

The Trustor agrees that at all times prior to full payment of the sum owed under the Note, the Trustor will, at the Trustor's own expense, maintain, preserve and keep the Security or cause the Security to be maintained and preserved in good condition. The Trustor will from time to time make or cause to be made all repairs, replacements and renewals deemed proper and

necessary by it. The Beneficiary shall have no responsibility in any of these matters or for the making of improvements or additions to the Security.

Trustor agrees to pay fully and discharge (or cause to be paid fully and discharged) all claims for labor done and for material and services furnished in connection with the Security, diligently to file or procure the filing of a valid notice of cessation upon the event of a cessation of labor on the work or construction on the Security for a continuous period of thirty (30) days or more, and to take all other reasonable steps to forestall the assertion of claims of lien against the Security of any part thereof. Trustor irrevocably appoints, designates and authorizes Beneficiary as its agent (said agency being coupled with an interest) with the authority, but without any obligation, to file for record any notices of completion or cessation of labor or any other notice that Beneficiary deems necessary or desirable to protect its interest in and to the Security or the Loan Documents; provided, however, that Beneficiary shall exercise its rights as agent of Trustor only in the event that Trustor shall fail to take, or shall fail to diligently continue to take, those actions as hereinbefore provided.

Upon demand by Beneficiary, Trustor shall make or cause to be made such demands or claims as Beneficiary shall specify upon laborers, materialmen, subcontractors or other persons who have furnished or claim to have furnished labor, services or materials in connection with the Security. Nothing herein contained shall require Trustor to pay any claims for labor, materials or services which Trustor in good faith disputes and is diligently contesting provided that Trustor shall, within thirty (30) days after the filing of any claim of lien, record in the Office of the Recorder of Santa Clara County, a surety bond in an amount equal to one and one-half (1 and ½) times the amount of such claim item to protect against a claim of lien.

Section 2.2 Granting of Easements.

Trustor may not grant easements, licenses, rights-of-way or other rights or privileges in the nature of easements with respect to any property or rights included in the Security except those required or desirable for installation and maintenance of public utilities including, without limitation, water, gas, electricity, sewer, telephone and telegraph, or those required by law. As to these exceptions, Beneficiary will grant and/or direct the Trustee to grant such easements.

Section 2.3. Assignment of Rents.

As part of the consideration for the indebtedness evidenced by the Note, subject to the rights of existing lenders (MidPen), Trustor hereby absolutely and unconditionally assigns and transfers to Beneficiary all the rents and revenues of the Property including those now due, past due, or to become due by virtue of any lease or other agreement for the occupancy or use of all or any part of the Property, regardless of to whom the rents and revenues of the Property are payable. Subject to the rights of senior lenders (CalHFA), Trustor hereby authorizes Beneficiary or Beneficiary's agents to collect the aforesaid rents and revenues and hereby directs each tenant of the Property to pay such rents to Beneficiary or Beneficiary's agents; provided, however, that prior to written notice given by Beneficiary to Trustor of the breach by Trustor of any covenant or agreement of Trustor in the Loan Documents, Trustor shall collect and receive all rents and revenues of the Property as trustee for the benefit of Beneficiary and Trustor to

apply the rents and revenues so collected to the Secured Obligations with the balance, so long as no such breach has occurred, to the account of Trustor, it being intended by Trustor and Beneficiary that this assignment of rents constitutes an absolute assignment and not an assignment for additional security only. Upon delivery of written notice by Beneficiary to Trustor of the breach by Trustor of any covenant or agreement of Trustor in the Loan Documents, and without the necessity of Beneficiary entering upon and taking and maintaining full control of the Property in person, by agent or by a court-appointed receiver, Beneficiary, subject to the rights of senior lenders, shall immediately be entitled to possession of all rents and revenues of the Property as specified in this Section 2.3 as the same becomes due and payable, including but not limited to rents then due and unpaid, and all such rents shall immediately upon delivery of such notice be held by Trustor as trustee for the benefit of Beneficiary only; provided, however, that the written notice by Beneficiary to Trustor of the breach by Trustor shall contain a statement that Beneficiary exercises its rights to such rents. Trustor agrees that commencing upon delivery of such written notice of Trustor's breach by Beneficiary to Trustor, each tenant of the Property shall make such rents payable to and pay such rents to Beneficiary or Beneficiary's agents on Beneficiary's written demand to each tenant therefor, delivered to each tenant personally, by mail or by delivering such demand to each rental unit, without any liability on the part of said tenant to inquire further as to the existence of a default by Trustor.

Trustor hereby covenants that except with respect to existing lenders, Trustor has not executed any prior assignment of said rents, that Trustor has not performed, and will not perform, any acts or has not executed and will not execute, any instrument which would prevent Beneficiary from exercising its rights under this Section 2.3, and that at the time of execution of this Deed of Trust, there has been no anticipation or prepayment of any of the rents of the Property for more than two (2) months prior to the due dates of such rents. Trustor covenants that Trustor will not hereafter collect or accept payment of any rents of the Property more than two (2) months prior to the due dates of such rents. Trustor further covenants that Trustor will execute and deliver to Beneficiary such further assignments of rents and revenues of the Property as Beneficiary may from time to time request.

Upon Trustor's breach of any covenant or agreement of Trustor in the Loan Documents, subject to the rights of senior lenders Beneficiary may in person, by agent or by a court-appointed receiver, regardless of the adequacy of Beneficiary's security, enter upon and take and maintain full control of the Property in order to perform all acts necessary and appropriate for the operation and maintenance thereof including, but not limited to, the execution, cancellation or modification of leases, the collection of all rents and revenues of the Property, the making of repairs to the Property and the execution or termination of contracts providing for the management or maintenance of the Property, all on such terms as are deemed best to protect the security of this Deed of Trust. In the event Beneficiary elects to seek the appointment of a receiver for the Property upon Trustor's breach of any covenant or agreement of Trustor in this Deed of Trust, Trustor hereby expressly consents to the appointment of such receiver. Beneficiary or the receiver shall be entitled to receive a reasonable fee for so managing the Property.

Subject to the rights of senior lenders, rents and revenues collected subsequent to delivery of written notice by Beneficiary to Trustor of the breach by Trustor of any covenant or agreement of Trustor in the Loan Documents shall be applied first to the costs, if any, of taking control of and managing the Property and collecting the rents, including, but not limited to, attorney's fees, receiver's fees, premiums on receiver's bonds, costs of repairs to the Property, premiums on insurance policies, taxes, assessments and other charges on the Property, and the costs of discharging any obligation or liability of Trustor as lessor or landlord of the Property and then to the sums secured by this deed of Trust. Beneficiary or the receiver shall have access to the books and records used in the operation and maintenance of the Property and shall be liable to account only for those rents actually received. Beneficiary shall not be liable to Trustor, anyone claiming under or through Trustor or anyone having an interest in the Property by reason of anything done or left undone by Beneficiary under this Section 2.3.

If the rents of the Property are not sufficient to meet the costs, if any, of taking control of and managing the Property and collecting the rents, any funds expended by Beneficiary for such purposes shall become part of the Security pursuant to Section 3.3 hereof. Unless Beneficiary and Trustor agree in writing to other terms of payment, such amounts shall be payable upon notice from Beneficiary to Trustor requesting payment thereof and shall bear interest from the date of disbursement at the rate stated in Section 3.3.

Any entering upon and taking and maintaining of control of the Property by Beneficiary or the receiver and any application of rents as provided herein shall not cure or waive any default hereunder or invalidate any other right or remedy of Beneficiary under applicable law or provided herein. This assignment of rents of the Property shall terminate at such time as this Deed of Trust ceases to secure the Security.

ARTICLE 3: TAXES AND INSURANCE; ADVANCES

Section 3.1 Taxes, Other Governmental Charges and Utility Charges.

Trustor shall pay, or cause to be paid, at least fifteen (15) days prior to the date of delinquency, all taxes, assessments, charges and levies imposed by any public authority or utility company which are or may become a lien affecting the Security or any part thereof; provided, however, that Trustor shall not be required to pay and discharge any such tax, assessment, charge or levy so long as (a) the legality thereof shall be promptly and actively contested in good faith and by appropriate proceedings, and (b) Trustor maintains reserves adequate to pay any liabilities contested pursuant to this Section 3.1. With respect to taxes, special assessments or other similar governmental charges, Trustor shall pay such amount in full prior to the attachment of any lien therefor on any part of the Security; provided, however, if such taxes, assessments or charges may be paid in installments, Trustor may pay in such installments. Except as provided in clause (b) of the first sentence of this paragraph, the provisions of this Section 3.1 shall not be construed to require that Trustor maintain a reserve account, escrow account, impound account or other similar account for the payment of future taxes, assessments, charges and levies.

In the event that Trustor shall fail to pay any of the foregoing items required by this Section to be paid by Trustor, Beneficiary may (but shall be under no obligation to) pay the

same, after the Beneficiary has notified the Trustor of such failure to pay and the Trustor fails to fully pay such items within seven (7) business days after receipt of such notice. Any amount so advanced therefor by Beneficiary, together with interest thereon from the date of such advance at the maximum rate permitted by law, shall become an additional obligation of Trustor to the Beneficiary and shall be secured hereby, and Trustor agrees to pay all such amounts.

Section 3.2 Provisions Respecting Insurance.

Trustor agrees to provide insurance conforming in all respects to that required under the Loan Documents during the course of construction and following completion, and at all times until all amounts secured by this Deed of Trust have been paid and all other obligations secured hereunder fulfilled, and this Deed of Trust reconveyed.

All such insurance policies and coverages shall be maintained at Trustor's sole cost and expense. Certificates of insurance for all of the above insurance policies, showing the same to be in full force and effect, shall be delivered to the Beneficiary upon demand therefor at any time prior to the Beneficiary's receipt of the entire Principal and all amounts secured by this Deed of Trust.

Section 3.3 Advances.

In the event the Trustor shall fail to maintain the full insurance coverage required by this Deed of Trust or shall fail to keep the Security in accordance with the Loan Documents, the Beneficiary, after at least seven (7) days prior notice to Trustor, may (but shall be under no obligation to) take out the required policies of insurance and pay the premiums on the same or may make such repairs or replacements as are necessary and provide for payment thereof; and all amounts so advanced therefor by the Beneficiary shall become an additional obligation of the Trustor to the Beneficiary (together with interest as set forth below) and shall be secured hereby, which amounts the Trustor agrees to pay on the demand of the Beneficiary, and if not so paid, shall bear interest from the date of the advance at the lesser of ten percent (10%) per annum or the maximum rate permitted by law.

ARTICLE 4: DAMAGE, DESTRUCTION OR CONDEMNATION

Section 4.1 Awards and Damages.

Subject to the rights of senior lenders, all judgments, awards of damages, settlements and compensation made in connection with or in lieu of (1) taking of all or any part of or any interest in the Property by or under assertion of the power of eminent domain, (2) any damage to or destruction of the Property or in any part thereof by insured casualty, and (3) any other injury or damage to all or any part of the Property ("Funds") shall be used by Trustor to repair the Property. If Trustor fails to repair, or is unable to repair the Property or is in Default of this Deed of Trust, the Funds are hereby assigned to and shall be paid to the Beneficiary by a check made payable to the Beneficiary. If the Funds are assigned or paid to the Beneficiary, the Beneficiary is authorized and empowered (but not required) to collect and receive any funds and is

authorized to apply them in whole or in part upon any indebtedness or obligation secured hereby, in such order and manner as the Beneficiary shall determine at its sole option. Following an Event of Default, the Beneficiary shall be entitled to settle and adjust all claims under insurance policies provided under this Deed of Trust and may deduct and retain from the proceeds of such insurance the amount of all expenses incurred by it in connection with any such settlement or adjustment. All or any part of the amounts so collected and recovered by the Beneficiary may be released to Trustor upon such conditions as the Beneficiary may impose for its disposition. Application of all or any part of the Funds collected and received by the Beneficiary or the release thereof shall not cure or waive any default under this Deed of Trust. Notwithstanding the provisions of this Section, the Beneficiary shall release the Funds to Trustor to be used to reconstruct the improvements on the Property provided that Beneficiary reasonably determines that Trustor (when taking into account the Funds) has sufficient funds to rebuild. The rights of the Beneficiary under this Section 4.1 are subject to the rights of any senior mortgage lender.

ARTICLE 5:
AGREEMENTS AFFECTING THE PROPERTY; FURTHER
ASSURANCES; PAYMENT OF PRINCIPAL AND INTEREST

Section 5.1 Other Agreements Affecting Property.

The Trustor shall duly and punctually perform all terms, covenants, conditions and agreements binding upon it under the Loan Documents and any other agreement of any nature whatsoever now or hereafter involving or affecting the Security or any part thereof.

Section 5.2 Agreement to Pay Attorneys' Fees and Expenses.

In the event of any Event of Default (as defined below) hereunder, and if the Beneficiary should employ attorneys or incur other expenses for the collection of amounts due or the enforcement of performance or observance of an obligation or agreement on the part of the Trustor in this Deed of Trust, the Trustor agrees that it will, on demand therefore, pay to the Beneficiary the reasonable fees of such attorneys and such other reasonable expenses so incurred by the Beneficiary; and any such amounts paid by the Beneficiary shall be added to the indebtedness secured by the lien of this Deed of Trust, and shall bear interest from the date such expenses are incurred at the lesser of ten percent (10%) per annum or the maximum rate permitted by law.

Section 5.3 Payment of the Principal.

The Trustor shall pay to the Beneficiary the Principal and any other payments as set forth in the Note in the amounts and by the times set out therein.

Section 5.4 Personal Property.

To the maximum extent permitted by law, the personal property subject to this Deed of Trust shall be deemed to be fixtures and part of the real property and this Deed of Trust shall

constitute a fixtures filing under the California Commercial Code. As to any personal property not deemed or permitted to be fixtures, this Deed of Trust shall constitute a security agreement under the California Commercial Code.

Section 5.5 Financing Statement.

The Trustor shall execute and deliver to the Beneficiary such financing statements pursuant to the appropriate statutes (commonly known as UCC-1 Financing Statements), and any other documents or instruments as are required to convey to the Beneficiary a valid perfected security interest in the Security. The Trustor agrees to perform all acts which the Beneficiary may reasonably request so as to enable the Beneficiary to maintain such valid perfected security interest in the Security in order to secure the payment of the Note in accordance with its terms. The Beneficiary is authorized to file a copy of any such financing statement in any jurisdiction(s) as it shall deem appropriate from time to time in order to protect the security interest established pursuant to this instrument.

Section 5.6 Operation of the Security.

The Trustor shall operate the Security (and, in case of a transfer of a portion of the Security subject to this Deed of Trust, the transferee shall operate such portion of the Security) in full compliance with the Loan Documents.

Section 5.7 Inspection of the Security.

At any and all reasonable times upon three (3) business days' notice, the Beneficiary and its duly authorized agents, attorneys, experts, engineers, accountants and representatives, shall have the right, without payment of charges or fees, to inspect the Security.

Section 5.8 Nondiscrimination.

All units within the Security shall be available for occupancy on a continuous basis to members of the general public who are income eligible households, including seniors and families. Except as provided in the preceding sentence, Trustor shall not give preference to any particular class or groups of persons in renting or selling any portion of the Project except to the extent necessary to comply with the Regulatory Agreement. The Trustor herein covenants by and for itself, its heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, sexual orientation, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Security, nor shall the Trustor itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the Security. The foregoing covenants shall run with the land.

ARTICLE 6:
HAZARDOUS WASTE

Trustor shall keep and maintain the Property in compliance with, and shall not cause or permit the Property to be in violation of any federal, state or local laws, ordinances or regulations relating to industrial hygiene or to the environmental conditions on, under or about the Property including, but not limited to, soil and ground water conditions. Trustor shall not use, generate, manufacture, store or dispose of on, under, or about the Property or transport to or from the Property any flammable explosives, radioactive materials, hazardous wastes, toxic substances or related materials, including without limitation, any substances defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," or "toxic substances" under any applicable federal or state laws or regulations (collectively referred to hereinafter as "Hazardous Materials") except such of the foregoing as are used in rehabilitation or operation of the improvements to be rehabilitated on the Property or as may be customarily kept and used in and about residential property similar to the development on the Property by Trustor.

Trustor shall immediately advise Beneficiary in writing if at any time it receives written notice of (i) any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened against Trustor or the Property pursuant to any applicable federal, state or local laws, ordinances, or regulations relating to any Hazardous Materials, ("Hazardous Materials Law"); (ii) all claims made or threatened by any third party against Trustor or the Property relating to damage, contribution, cost recovery compensation, loss or injury resulting from any Hazardous Materials (the matters set forth in clauses (i) and (ii) above hereinafter referred to a "Hazardous Materials Claims"); and (iii) Trustor's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Property that could cause the Property or any part thereof to be classified as "border-zone property" under the provision of California Health and Safety Code, Sections 25220 *et seq.* or any regulation adopted in accordance therewith, or to be otherwise subject to any restrictions on the ownership, occupancy, transferability or use of the Property under any Hazardous Materials Law.

Beneficiary shall have the right to join and participate in, as a party if it so elects, any legal proceedings or actions initiated in connection with any Hazardous Materials Claims and to have its reasonable attorneys' fees in connection therewith paid by Trustor. Trustor shall indemnify and hold harmless Beneficiary and its councilmembers, supervisors, directors, officers, employees, agents, successors and assigns from and against any loss, damage, cost, expense or liability directly or indirectly arising out of or attributable to the use, generation, storage, release, threatened release, discharge, disposal, or presence of Hazardous Materials on, under, or about the Property including without limitation: (a) all foreseeable consequential damages; (b) the costs of any required or necessary repair, cleanup or detoxification of the Property and the preparation and implementation of any closure, remedial or other required plans; and (c) all reasonable costs and expenses incurred by Beneficiary in connection with clauses (a) and (b), including but not limited to reasonable attorneys' fees.

Without Beneficiary's prior written consent, which shall not be unreasonably withheld, Trustor shall not take any remedial action in response to the presence of any Hazardous

Materials on, under or about the Property, nor enter into any settlement agreement, consent decree, or other compromise in respect to any Hazardous Material Claims, which remedial action, settlement, consent decree or compromise might, in Beneficiary's reasonable judgment, impair the value of the Beneficiary's security hereunder; provided, however, that Beneficiary's prior consent shall not be necessary in the event that the presence of Hazardous Materials on, under, or about the Property either poses an immediate threat to the health, safety or welfare of any individual or is of such a nature that an immediate remedial response is necessary and it is not reasonably possible to obtain Beneficiary's consent before taking such action, provided that in such event Trustor shall notify Beneficiary as soon as practicable of any action so taken. Beneficiary agrees not to withhold its consent, where such consent is required hereunder, if either (i) a particular remedial action is ordered by a court of competent jurisdiction, (ii) Trustor will or may be subjected to civil or criminal sanctions or penalties if it fails to take a required action; (iii) Trustor establishes to the reasonable satisfaction of Beneficiary that there is no reasonable alternative to such remedial action which would result in less impairment of Beneficiary's security hereunder; or (iv) the action has been agreed to by Beneficiary.

The Trustor hereby acknowledges and agrees that (i) this Article is intended as the Beneficiary's written request for information (and the Trustor's response) concerning the environmental condition of the Property as required by California Code of Civil Procedure Section 726.5, and (ii) each representation and warranty in this Deed of Trust or any of the other Loan Documents (together with any indemnity applicable to a breach of any such representation and warranty) with respect to the environmental condition of the property is intended by the Beneficiary and the Trustor to be an "environmental provision" for purposes of California Code of Civil Procedure Section 736.

In the event that any portion of the Property is determined to be "environmentally impaired" (as that term is defined in California Code of Civil Procedure Section 726.5(e)(3)) or to be an "affected parcel" (as that term is defined in California Code of Civil Procedure Section 726.5(e)(1)), then, without otherwise limiting or in any way affecting the Beneficiary's or the Trustee's rights and remedies under this Deed of Trust, the Beneficiary may elect to exercise its rights under California Code of Civil Procedure Section 726.5(a) to (1) waive its lien on such environmentally impaired or affected portion of the Property and (2) exercise (a) the rights and remedies of an unsecured creditor, including reduction of its claim against the Trustor to judgment, and (b) any other rights and remedies permitted by law. For purposes of determining the Beneficiary's right to proceed as an unsecured creditor under California Code of Civil Procedure Section 726.5(a), the Trustor shall be deemed to have willfully permitted or acquiesced in a release or threatened release of hazardous materials, within the meaning of California Code of Civil Procedure Section 726.5(d)(1), if the release or threatened release of hazardous materials was knowingly or negligently caused or contributed to by any lessee, occupant, or user of any portion of the Property and the Trustor knew or should have known of the activity by such lessee, occupant, or user which caused or contributed to the release or threatened release. All costs and expenses, including (but not limited to) attorneys' fees, incurred by the Beneficiary in connection with any action commenced under this paragraph, including any action required by California Code of Civil Procedure Section 726.5(b) to determine the degree to which the Property is environmentally impaired, plus interest thereon at the lesser of ten percent (10%) or the maximum rate permitted by law, until paid, shall be added to the

indebtedness secured by this Deed of Trust and shall be due and payable to the Beneficiary upon its demand made at any time following the conclusion of such action.

ARTICLE 7:
EVENTS OF DEFAULT AND REMEDIES

Section 7.1 Events of Default.

The following shall constitute Events of Default: (1) failure to make any payment to be paid by Trustor under the Loan Documents within ten (10) days following written notice such payment is due; (2) failure to observe or perform any of Trustor's other covenants, agreements or obligations under the Loan Documents, including, without limitation, the provisions concerning discrimination, subject to applicable notice and cure periods, if any, included in the Loan Documents; or (3) failure to make any payment or perform any of Trustor's other covenants, agreements, or obligations under any other debt instruments or regulatory agreement secured by the Property, which default shall not be cured within the times and in the manner provided therein.

Section 7.2 Acceleration of Maturity.

If an Event of Default shall have occurred and be continuing, then at the option of the Beneficiary, the amount of any payment related to the Event of Default and the unpaid Principal of the Note shall immediately become due and payable, upon written notice by the Beneficiary to the Trustor (or automatically where so specified in the Loan Documents), and no omission on the part of the Beneficiary to exercise such option when entitled to do so shall be construed as a waiver of such right.

Section 7.3 The Beneficiary's Right to Enter and Take Possession.

If an Event of Default shall have occurred and be continuing, the Beneficiary subject to the rights of senior lenders may:

(a) Either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court, and without regard to the adequacy of its security, enter upon the Security and take possession thereof (or any part thereof) and of any of the Security, in its own name or in the name of Trustee, and do any acts which it deems necessary or desirable to preserve the value or marketability of the Property, or part thereof or interest therein, increase the income therefrom or protect the security thereof. The entering upon and taking possession of the Security shall not cure or waive any Event of Default or Notice of Default (as defined below) hereunder or invalidate any act done in response to such Default or pursuant to such Notice of Default and, notwithstanding the continuance in possession of the Security, Beneficiary shall be entitled to exercise every right provided for in this Deed of Trust, or by law upon occurrence of any Event of Default, including the right to exercise the power of sale;

(b) Commence an action to foreclose this Deed of Trust as a mortgage, appoint a receiver, or specifically enforce any of the covenants hereof;

(c) Deliver to Trustee a written declaration of default and demand for sale, and a written notice of default and election to cause Trustor's interest in the Security to be sold ("Notice of Default and Election to Sell"), which notice Trustee or Beneficiary shall cause to be duly filed for record in the Official Records of Santa Clara County; or

(d) Exercise all other rights and remedies provided herein, in the instruments by which the Trustor acquires title to any Security, or in any other document or agreement now or hereafter evidencing, creating or securing all or any portion of the obligations secured hereby, or provided by law.

Section 7.4 Foreclosure by Power of Sale.

Subject to the rights of senior lenders, should the Beneficiary elect to foreclose by exercise of the power of sale herein contained, the Beneficiary shall give notice to the Trustee (the "Notice of Sale") and shall deposit with Trustee this Deed of Trust which is secured hereby (and the deposit of which shall be deemed to constitute evidence that the unpaid principal amount of the Note is immediately due and payable), and such receipts and evidence of any expenditures made that are additionally secured hereby as Trustee may require.

(a) Upon receipt of such notice from the Beneficiary, Trustee shall cause to be recorded, published and delivered to Trustor such Notice of Default and Election to Sell as then required by law and by this Deed of Trust. Trustee shall, without demand on Trustor, after lapse of such time as may then be required by law and after recordation of such Notice of Default and Election to Sell and after Notice of Sale having been given as required by law, sell the Security, at the time and place of sale fixed by it in said Notice of Sale, whether as a whole or in separate lots or parcels or items as Trustee shall deem expedient and in such order as it may determine unless specified otherwise by the Trustor according to California Civil Code Section 2924g(b), at public auction to the highest bidder, for cash in lawful money of the United States payable at the time of sale. Trustee shall deliver to such purchaser or purchasers thereof its good and sufficient deed or deeds conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed or any matters of fact shall be conclusive proof of the truthfulness thereof. Any person, including, without limitation, Trustor, Trustee or Beneficiary, may purchase at such sale, and Trustor hereby covenants to warrant and defend the title of such purchaser or purchasers.

(b) After deducting all reasonable costs, fees and expenses of Trustee, including costs of evidence of title in connection with such sale, Trustee shall apply the proceeds of sale to payment of: (i) the unpaid Principal amount of the Note; (ii) all other amounts owed to Beneficiary under the Loan Documents; (iii) all other sums then secured hereby and (iv) the remainder, if any, to Trustor.

(c) Trustee may postpone sale of all or any portion of the Property by public announcement at such time and place of sale, and from time to time thereafter, and without

further notice make such sale at the time fixed by the last postponement, or may, in its discretion, give a new Notice of Sale.

Section 7.5 Receiver.

If an Event of Default shall have occurred and be continuing, Beneficiary, **subject to the rights of senior lenders**, as a matter of right and without further notice to Trustor or anyone claiming under the Security, and without regard to the then value of the Security or the interest of Trustor therein, shall have the right to apply to any court having jurisdiction to appoint a receiver or receivers of the Security (or a part thereof), and Trustor hereby irrevocably consents to such appointment and waives further notice of any application therefor. Any such receiver or receivers shall have all the usual powers and duties of receivers in like or similar cases, and all the powers and duties of Beneficiary in case of entry as provided herein, and shall continue as such and exercise all such powers until the date of confirmation of sale of the Security, unless such receivership is sooner terminated.

Section 7.6 Remedies Cumulative.

No right, power or remedy conferred upon or reserved to the Beneficiary by this Deed of Trust is intended to be exclusive of any other right, power or remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder or now or hereafter existing at law or in equity.

Section 7.7 No Waiver.

(a) No delay or omission of the Beneficiary to exercise any right, power or remedy accruing upon any Event of Default shall exhaust or impair any such right, power or remedy, or shall be construed to be a waiver of any such Event of Default or acquiescence therein; and every right, power and remedy given by this Deed of Trust to the Beneficiary may be exercised from time to time and as often as may be deemed expeditious by the Beneficiary. No consent or waiver, expressed or implied, by the Beneficiary to or any breach by the Trustor in the performance of the obligations hereunder shall be deemed or construed to be a consent to or waiver of obligations of the Trustor hereunder. Failure on the part of the Beneficiary to complain of any act or failure to act or to declare an Event of Default, irrespective of how long such failure continues, shall not constitute a waiver by the Beneficiary of its right hereunder or impair any rights, power or remedies consequent on any Event of Default by the Trustor.

(b) If the Beneficiary (i) grants forbearance or an extension of time for the payment of any sums secured hereby, (ii) takes other or additional security or the payment of any sums secured hereby, (iii) waives or does not exercise any right granted in the Loan Documents, (iv) releases any part of the Security from the lien of this Deed of Trust, or otherwise changes any of the terms, covenants, conditions or agreements in the Loan Documents, (v) consents to the granting of any easement or other right affecting the Security, or (vi) makes or consents to any agreement subordinating the lien hereof, any such act or omission shall not release, discharge,

modify, change or affect the original liability under this Deed of Trust, or any other obligation of the Trustor or any subsequent purchaser of the Security or any part thereof, or any maker, co-signer, endorser, surety or guarantor (unless expressly released); nor shall any such act or omission preclude the Beneficiary from exercising any right, power or privilege herein granted or intended to be granted in any Event of Default then made or of any subsequent Event of Default, nor, except as otherwise expressly provided in an instrument or instruments executed by the Beneficiary shall the lien of this Deed of Trust be altered thereby.

Section 7.8 Suits to Protect the Security.

The Beneficiary shall have power to (a) institute and maintain such suits and proceedings as it may deem expedient to prevent any impairment of the Security and the rights of the Beneficiary as may be unlawful or any violation of this Deed of Trust, (b) preserve or protect its interest (as described in this Deed of Trust) in the Security, and (c) restrain the enforcement of or compliance with any legislation or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid, if the enforcement for compliance with such enactment, rule or order would impair the Security thereunder or be prejudicial to the interest of the Beneficiary.

Section 7.9 Trustee May File Proofs of Claim.

In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other proceedings affecting the Trustor, its creditors or its property, the Beneficiary, to the extent permitted by law, shall be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have the claims of the Beneficiary allowed in such proceedings and for any additional amount which may become due and payable by the Trustor hereunder after such date.

Section 7.10 Waiver.

The Trustor waives presentment, demand for payment, notice of dishonor, notice of protest and nonpayment, protest, notice of interest on interest and late charges, and diligence in taking any action to collect any sums owing under the Note or in proceedings against the Security, in connection with the delivery, acceptance, performance, default, endorsement or guaranty of this Deed of Trust.

ARTICLE 8:
MISCELLANEOUS

Section 8.1 Amendments.

This instrument cannot be waived, changed, discharged or terminated orally, but only by an instrument in writing signed by Beneficiary and Trustor.

Section 8.2 Reconveyance by Trustee.

Upon written request of Beneficiary stating that all sums secured hereby have been paid or forgiven, and upon surrender of this Deed of Trust to Trustee for cancellation and retention, and upon payment by Trustor of Trustee's reasonable fees, Trustee shall reconvey the Security to Trustor, or to the person or persons legally entitled thereto.

Section 8.3 Notices.

If at any time after the execution of this Deed of Trust it shall become necessary or convenient for one of the parties hereto to serve any notice, demand or communication upon the other party, such notice, demand or communication shall be in writing and shall be served personally or by depositing the same in the registered United States mail, return receipt requested, postage prepaid and (1) if intended for Beneficiary shall be addressed to:

City of Sunnyvale Housing Division
Community Development Department
P.O. Box 3707
Sunnyvale, California 94088-3707
Attention: Housing Officer

and (2) if intended for Trustor shall be addressed to:

MP Homestead Park Associates
303 Vintage Park Drive, Suite 250
Foster City, California 94404
Attention: PRESIDENT

With a copy to Trustor's investor limited partner: (AEGON)

Bay Area Community Investments I, LLC
c/o AEGON USA Realty Investors, LLC
4333 Edgewood Road NE
Cedar Rapids, IA 52499
Attention: LIHTC Reporting
Facsimile: 319-355-8030
Email: lihtcreporting@aegonusa.com

Any notice, demand or communication shall be deemed given, received, made or communicated on the date personal delivery is affected or, if mailed in the manner herein specified, on the delivery date or date delivery is refused by the addressee, as shown on the return receipt. Either party may change its address at any time by giving written notice of such change to Beneficiary or Trustor as the case may be, in the manner provided herein, at least ten (10) days prior to the date such change is desired to be effective.

Section 8.4 Successors and Joint Trustors.

Where an obligation is created herein binding upon Trustor, the obligation shall also apply to and bind any transferee or successors in interest. Where the terms of the Deed of Trust have the effect of creating an obligation of the Trustor and a transferee, such obligation shall be deemed to be a joint and several obligations of the Trustor and such transferee. Where more than one entity or person is signing as Trustor, all obligations of Trustor shall be deemed to be a joint and several obligations of each and every entity and person signing as Trustor.

Section 8.5 Captions.

The captions or headings at the beginning of each Section hereof are for the convenience of the parties and are not a part of this Deed of Trust.

Section 8.6 Invalidity of Certain Provisions.

Every provision of this Deed of Trust is intended to be severable. In the event any term or provision hereof is declared to be illegal or invalid for any reason whatsoever by a court or other body of competent jurisdiction, such illegality or invalidity shall not affect the balance of the terms and provisions hereof, which terms and provisions shall remain binding and enforceable. If the lien of this Deed of Trust is invalid or unenforceable as to any part of the debt, or if the lien is invalid or unenforceable as to any part of the Security, the unsecured or partially secured portion of the debt, and all payments made on the debt, whether voluntary or under foreclosure or other enforcement action or procedure, shall be considered to have been first paid or applied to the full payment of that portion of the debt which is not secured or partially secured by the lien of this Deed of Trust.

Section 8.7 Governing Law.

This Deed of Trust shall be governed by and construed in accordance with the laws of the State of California.

Section 8.8 Gender and Number.

In this Deed of Trust the singular shall include the plural and the masculine shall include the feminine and neuter and vice versa, if the context so requires.

Section 8.9 Deed of Trust, Mortgage.

Any reference in this Deed of Trust to a mortgage shall also refer to a deed of trust and any reference to a deed of trust shall also refer to a mortgage.

Section 8.10 Actions.

Trustor agrees to appear in and defend any action or proceeding purporting to affect the Security.

Section 8.11 Substitution of Trustee.

Beneficiary may from time to time substitute a successor or successors to any Trustee named herein or acting hereunder to execute this Trust. Upon such appointment, and without conveyance to the successor trustee, the latter shall be vested with all title, powers, and duties conferred upon any Trustee herein named or acting hereunder. Each such appointment and substitution shall be made by written instrument executed by Beneficiary, containing reference to this Deed of Trust and its place of record, which, when duly recorded in the proper office of the county or counties in which the Property is situated, shall be conclusive proof of proper appointment of the successor trustee.

Section 8.12 Statute of Limitations.

The pleading of any statute of limitations as a defense to any and all obligations secured by this Deed of Trust is hereby waived to the full extent permissible by law.

Section 8.13 Acceptance by Trustee.

Trustee accepts this Trust when this Deed of Trust, duly executed and acknowledged, is made public record as provided by law. Except as otherwise provided by law the Trustee is not obligated to notify any party hereto of pending sale under this Deed of Trust or of any action of proceeding in which Trustor, Beneficiary, or Trustee shall be a party unless brought by Trustee.

Section 8.14 Further Advances.

Beneficiary may, at its option, at any time during the term of the Loan Agreement, make further advances to Trustor, with interest and late charges to be secured by this Deed of Trust.

Section 8.15 Tax Credit Subordination. Notwithstanding anything to the contrary contained herein or in any documents secured by this Deed of Trust or contained in any subordination agreement, the Beneficiary acknowledges and agrees that in the event of a foreclosure or deed-in-lieu of foreclosure (collectively, "Foreclosure") with respect to the property encumbered by this deed of trust, the following rule contained in Section 42(h)(6)(E)(ii) of the Internal Revenue Code of 1986, as amended, shall apply:

For a period of three (3) years from the date of Foreclosure, with respect to any unit that had been regulated by the regulatory agreement with the California Tax Credit Allocation Committee, (i) none of the tenants occupying those units at the time of Foreclosure may be evicted or their tenancy terminated (other than for good cause), (ii) nor may any rent be increased except as otherwise permitted under Section 42 of the Code.

Section 8.16 Judicial Reference. It is the desire and intention of the parties to agree upon a mechanism and procedure under which any claim, controversy, breach or dispute arising out of this Deed of Trust, including, without limitation, the interpretation of any term or provision of this Deed of Trust, or any claim, controversy, breach or dispute arising out of the work, services or obligations performed under a this Deed of Trust, including, without limitation, the design,

specifications, surveying, planning, supervision, testing, or observation of construction or construction of an improvement to, or survey of, the Project, (individually, referred to as a “Dispute”, and collectively referred to as “Disputes”) will be resolved in a prompt and expeditious manner. Accordingly, all or any such Disputes, whether seeking damages or equitable relief, shall be subject to the procedures set forth in this section. Any unresolved Disputes shall be heard by a referee pursuant to the provisions of the California Code of Civil Procedure, Sections 638-645.1, inclusive, and as set forth in this section:

- 8.16.1 Procedure for Appointment. The venue of any proceeding brought under this section shall be in Santa Clara County, California (unless changed by order of the referee). The party seeking to resolve the Disputes shall file in court and serve on the other party a complaint describing the matters in dispute. Service of the complaint shall be as prescribed by law. At any time after service of the complaint, any party may request the designation of a referee to try the dispute. Thereafter the parties shall use their best efforts to agree upon the selection of a referee. If the parties are unable to agree upon a referee within ten (10) days after a written request to do so by any party, then any party may petition the presiding judge of the superior court in which the action is filed or the superior court judge to whom the matter has been assigned (the “Judge”) to appoint a referee. For the guidance of the Judge making the appointment of the referee, the parties agree that the person so appointed shall be a retired judge or a lawyer experienced in the subject matter of the dispute.
- 8.16.2 Appointment of Proposed Referee as Judge Pro Tem. In recognition that (1) there is no action pending as of the date of this Deed of Trust in which the parties thereto can stipulate to the appointment of a temporary judge, (2) there is no statute authorizing such a stipulation in advance of the filing of an action in the superior court, and (3) the appointment of a referee as a temporary judge (“judge pro tem”) under Article VI, Section 21 of the California Constitution and California Rules of Court Rule 244, would be preferable to a general reference, the parties hereby covenant that in the event of the filing of an action in the superior court to resolve all or any disputes, the parties thereto shall use their best efforts to stipulate that the proposed referee be appointed as a temporary judge under Article VI, Section 21 of the California Constitution.
- 8.16.3 Decision and Jurisdiction of Referee. The referee or judge pro tem shall decide all issues of fact and law submitted by the parties for decision in the same manner as required for a trial by court, including all law and motion matters, ex parte matters and discovery disputes. The referee or judge pro tem shall try and decide any or all Disputes according to all of the substantive, evidentiary and procedural law of the State of California. When the referee or judge pro tem has decided the Disputes, the referee or judge pro tem shall prepare a statement of decision and judgment. The judgment entered by the Superior Court shall be appealable in the same manner as any other judgment.

8.16.4 Discovery. Discovery shall be allowed and conducted under the supervision of the referee or judge pro tem pursuant to the provisions of the California Code of Civil Procedure and the California Rules of Court.

8.16.5 Cooperation. The parties shall diligently cooperate with one another and the person appointed as referee or judge pro tem to resolve each and every Dispute and shall perform such acts as may be necessary to obtain a prompt and expeditious resolution of all such Disputes. If either party refuses to diligently cooperate, and the other party, after first giving notice of its intent to rely on the provisions of this subparagraph, incurs additional expenses or attorneys' fees solely as a result of such failure to diligently cooperate, the referee or temporary judge may award such additional expenses and attorneys' fees to the party giving such notice, even if such party is not the prevailing party in the dispute.

8.16.6 Allocation of Costs. The cost of the reference shall be borne equally by Beneficiary and Trustor.

8.16.7 Special Disclosure. Notice: By signing this Deed of Trust, Trustor and Beneficiary agree to have all and any Disputes decided by judicial reference in accordance with California Code of Civil Procedure, Sections 638-645.1, and Trustor and Beneficiary are giving up any rights Trustor and Beneficiary might possess to have the Dispute litigated by a jury trial. If Trustor or Beneficiary refuses to submit to judicial reference after agreeing to this provision, such party may be compelled to submit to judicial reference. The parties' agreement to this judicial reference provision is voluntary.

IN WITNESS WHEREOF, Trustor has executed this Deed of Trust as of the day and year first above written.

MP HOMESTEAD PARK ASSOCIATES
a California Limited Partnership

By: MP Preservation, Inc., a California
nonprofit public benefit corporation, Its General
Partner

By: Matthew O. Franklin
Its: Assistant Secretary

STATE OF CALIFORNIA)
)
COUNTY OF _____)

On _____, before me, _____, Notary Public, personally appeared _____, proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public

STATE OF CALIFORNIA)
)
COUNTY OF _____)

On _____, before me, _____, Notary Public, personally appeared _____, proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public

EXHIBIT A
(Legal Description)

The land is situated in the State of California, County of Santa Clara, City of Sunnyvale and is described as follows:

LEGAL DESCRIPTION

Real property in the City of Sunnyvale, County of Santa Clara, State of California, described as follows:

Parcel One:

Lots 1, and 3, so designated and delineated on the Map of Tract No. 5292 Homestead Plaza Subdivision, recorded July 5, 1973, in Book 326 of Maps, pages 1, Santa Clara County Records.

Parcel Two:

Parcel B, as shown upon that certain Parcel Map recorded December 23, 2002 in Book 757 of Maps, Pages 1 and 2, Santa Clara County Records.

APN: 323-41-001 (Affects Lot 1 of Parcel One)

323-41-003 (Affects Lot 3 of Parcel One)

323-41-005 (Affects Parcel Two)

EXHIBIT D
REGULATORY AGREEMENT

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Sunnyvale
Community Development Department
P.O. Box 3707
Sunnyvale, CA 94088-3707
Attn: Housing Officer

No fee for recording pursuant to
Government Code Section 27383

**CITY OF SUNNYVALE HOUSING MITIGATION FUND
REGULATORY AGREEMENT AND DECLARATION
OF RESTRICTIVE COVENANTS
(Homestead Park Apartments Rehabilitation)**

This Regulatory Agreement and Declaration of Restrictive Covenants (the "Agreement") is made and entered into as of this 1st day of ____ 2013, by and between the City of Sunnyvale, a municipal corporation (the "City") and MP Homestead Park Associates, a California Limited Partnership (the "Borrower").

RECITALS

A. The City and the Borrower have entered into a City Housing Mitigation Fund Loan Agreement pursuant to which the City will provide a loan (the "Loan") to the Borrower to rehabilitate nine buildings consisting of 78 apartment units and a laundry room, or such greater number of units as may be economically feasible (the "Project"), at that certain real property known as Homestead Park, a 211-unit affordable apartment project for low to very-low income households whose annual gross incomes range from 30% to 60% of Area Median Income (AMI) for Santa Clara County, owned by Borrower and located in the City of Sunnyvale, California as more particularly described in Exhibit A attached hereto (the "Property"). Capitalized terms used but not defined in this Agreement shall have the meanings set forth in the Loan Agreement (as defined below).

B. The Loan is provided by the City with funds from the City's Housing Mitigation Fund.

C. The City has agreed to make the Loan to the Borrower on the condition that the Property be maintained and operated in accordance with restrictions concerning affordability, operation, and maintenance, as specified in this Agreement and the Loan Agreement.

D. As a condition of providing the Loan, the City requires the Borrower to execute this Agreement which will regulate all of the two-hundred eleven (211) residential units of the Property as "Assisted Units", in accordance with the schedule of units in Exhibit B attached hereto and incorporated herein, to ensure that the units are occupied by and affordable to Low-Income Households and Very Low-Income Households for the term of this Agreement. These units will be monitored by the City for compliance with City Housing Mitigation Fund program requirements.

NOW THEREFORE, in consideration of the recitals, hereof, and other mutual covenants and promises contained herein and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and the Borrower hereby agree as follows.

ARTICLE 1 DEFINITIONS

1.1 Definitions

When used in this Agreement, the following terms shall have the respective meanings assigned to them in this Article 1.

(a) "Adjusted Income" shall mean the total anticipated annual income of all persons in a household as calculated in accordance with 24 CFR 92.203(b)(1) (which incorporates 24 CFR 5.609).

(b) "Agreement" shall mean this Regulatory Agreement and Declaration of Restrictive Covenants.

(c) "Borrower" shall mean MP Homestead Park Associates, a California Limited Partnership and its successors and assigns to the Project.

(d) "City" shall mean the City of Sunnyvale, a municipal corporation.

(e) "City Assisted Units" shall mean a dwelling unit within the Project, the rehabilitation of which was assisted with funds provided by this Loan.

(f) "Deed of Trust" shall mean the deed of trust to the City on the Property which secures repayment of the Loan and the performance of the Loan Agreement and this Agreement.

(g) "Household Size" shall mean the actual number of persons in the applicable household.

(h) "Loan" shall mean all funds loaned to the Borrower by the City pursuant to the Loan Agreement.

(i) "Loan Agreement" shall mean the City Housing Mitigation Fund Loan Agreement entered into by and between the City and the Borrower, dated concurrently herewith.

(j) "Low Income Household" shall mean a household whose Adjusted Income is 60 percent or less of the area median income as determined by HUD.

(k) "Low Income Rent" shall mean the maximum allowable rent for a Low Income household pursuant to Section 2.2(a) below.

(l) "Median Income" shall mean the median gross yearly household income, adjusted for household size, in the County of Santa Clara, California, as published from time to time by the United States Department of Housing and Urban Development ("HUD") and the State of California. In the event that such income determinations are no longer published, or are not updated for a period of at least eighteen (18) months, the City shall provide the Borrower with other income determinations which are reasonably similar with respect to methods of calculation to those previously published by HUD and the State.

(m) "Note" shall mean the promissory note from the Borrower to the City evidencing all or any part of the Loan.

(o) "Project" shall have the meaning set forth in Recital A above.

(p) "Property" shall mean the real property described in Exhibit A attached hereto and incorporated herein.

(q) "Rent" shall mean the total of monthly payments by the Tenant of a Unit for the following: use and occupancy of the Unit and land and associated facilities, including parking; any separately charged fees or service charges assessed by the Borrower which are required of all Tenants, other than security deposits; an allowance for the cost of an adequate level of service for utilities paid by the Tenant, including garbage collection, sewer, water, electricity, gas and other heating, cooking and refrigeration fuel, but not telephone service or cable TV; and any other interest, taxes, fees or charges for use of the land or associated facilities and assessed by a public or private entity other than the Borrower, and paid by the Tenant.

(r) "Tenant" shall mean a household occupying a Unit.

(s) "Term" shall mean the term of this Agreement, which shall commence on the date of this Agreement and shall continue until the fifty-fifth (55th) anniversary date of this Agreement, or a specified later date in the event the City and Borrower agree to extend such term.

(t) "Unit" for leasing and management purposes shall mean one of the 211 apartments in the Property, excluding manager's units, which pursuant to Section 2.1(a) below, are required to be occupied by, or if vacant available for occupancy by, Low or Very Low-Income Households.

(u) "Very-Low Income Household" shall mean a household with an Adjusted Income that does not exceed the qualifying limits for very-low income households, as established

and amended from time to time pursuant to Section 8 of the United States Housing Act of 1937, and as published by the State of California Department of Housing and Community Development.

ARTICLE 2
AFFORDABILITY AND OCCUPANCY COVENANTS

2.1 Occupancy Requirements.

(a) City Assisted Units. All of the City Assisted Units shall be rented to and occupied by or, if vacant, available for occupancy by Low or Very Low-Income Households in accordance with Exhibit B.

2.2 Allowable Rent

(a) Low Income Rent. Rents (including utility allowance) charged to Tenants of City Assisted Units shall not exceed (1) one-twelfth (1/12) of thirty percent (30%) of sixty percent (60%) of Median Income, assumed for Household Size.

(b) Very Low-Income Rent. Rents (including utility allowance) charged to Tenants of City Assisted Units shall not exceed (1) one-twelfth (1/12) of thirty percent (30%) of fifty percent (50%) of Median Income, assumed for Household Size.

(c) City Approval of Rents. All rent increases for City Assisted Units shall be subject to City approval. The City shall provide the Borrower with a schedule of maximum permissible rents for the City Assisted Units annually based on the formulas described in (a) and (b) above.

(d) Housing Assistance Payment Contracts. In the event that some or all of the Assisted Units are subject to a valid Housing Assistance Payment (“HAP”) contract with HUD and/or the Santa Clara County Housing Authority, the allowable Rent may be determined by the parties to the HAP contract and may exceed the allowable Rent set forth above. Borrower shall provide notice to City that a HAP contract has been executed, and such notice shall identify which units will be subject to the HAP contract, and the term of HAP contract applicable to each unit. Executed HAP contract(s) shall be made available for City inspection upon request. Under applicable federal law, prior to the expiration of any HAP assistance, Borrower shall notify Tenant that their Rent may be increased to the applicable allowable Rent limit specified herein.

ARTICLE 3
INCOME CERTIFICATION AND REPORTING

3.1 Income Certification.

The Borrower will obtain, complete and maintain on file, immediately prior to initial occupancy and annually thereafter, income certifications from each Tenant renting any of the Units. The Borrower shall make a good faith effort to verify that the income provided by an applicant or occupying household in an income certification is accurate by taking two or more of the following steps as a part of the verification process: (a) obtain a pay stub for the most recent pay period; (b) obtain an income tax return for the most recent tax year; (c) conduct a credit agency or similar search; (d) obtain an income verification form from the applicant's current employer; (e) obtain an income verification form from the Social Security Administration and/or the California Department of Social Services if the applicant receives assistance from either of such agencies; or (f) if the applicant is unemployed and has no such tax return, obtain another form of independent verification. Copies of Tenant income certifications shall be available to the City upon request.

3.2 Annual Report to the City.

The Borrower shall submit to the City (a) not later than the ninetieth (90th) day after the close of each fiscal year, or such other date as may be requested by the City, a statistical report, including income and rent data for the Assisted Units, setting forth the information called for therein.

3.3 Additional Information.

The Borrower shall provide any additional information reasonably requested by the City to the City. The City shall have the right to examine and make copies of all books, records or other documents of the Borrower which pertain to the Project.

3.4 Records.

The Borrower shall maintain complete, accurate and current records pertaining to the Project, and shall permit any duly authorized representative of the City to inspect records, including records pertaining to income of Tenants. All Tenant lists, applications and waiting lists relating to the Project shall at all times be kept separate and identifiable from any other business of the Borrower and shall be maintained as required by the City, in a reasonable condition for proper audit and subject to examination during business hours by representatives of the City. The Borrower shall retain copies of all materials obtained or produced with respect to occupancy of the Units for a period of at least five (5) years.

3.5 On-site Inspection.

The City shall each have the right to perform an on-site inspection of the Project at least one time per year with adequate notice to Borrower, a minimum of thirty (30) days. The Borrower agrees to cooperate in such inspection.

ARTICLE 4
OPERATION OF THE PROJECT

4.1 Use of the Project.

The Property shall be operated as affordable rental housing consisting of two-hundred eleven (211) Units, including two Units for on-site property managers, and the remainder occupied by Tenants.

4.2 Compliance with Loan Agreement.

Borrower shall comply with all the terms and provisions of the Loan Agreement, and the Deed of Trust for the Project.

4.3 Taxes and Assessments.

Borrower shall pay all real and personal property taxes, assessments and charges and all franchise, income, employment, old age benefit, withholding, sales, and other taxes assessed against it, or payable by it, at such times and in such manner as to prevent any penalty from accruing, or any line or charge from attaching to the Property; provided, however, that Borrower shall have the right to contest in good faith, any such taxes, assessments, or charges. In the event Borrower exercises its right to contest any tax, assessment, or charge against it, Borrower, on final determination of the proceeding or contest, shall immediately pay or discharge any decision or judgment rendered against it, together with all costs, charges and interest.

ARTICLE 5
PROPERTY MANAGEMENT AND MAINTENANCE

5.1 Management Responsibilities.

The Borrower is responsible for all management functions with respect to the Project, including without limitation the selection of tenants, certification and recertification of household size and income, evictions, collection of rents and deposits, maintenance, landscaping, routine and extraordinary repairs, replacement of capital items, and security. The City shall have no responsibility over management of the Project. The Borrower shall retain a professional property management company approved by the City in its reasonable discretion to perform its management duties hereunder, unless the City approves self-management by the Borrower. A resident manager shall also be required. The City hereby approves MidPen Property Management Corporation as the Management Agent.

(a) Accounting Records. In a manner subject to City approval, the Borrower shall maintain, on an accrual or modified accrual basis, a general ledger accounting system that is posted monthly and that accurately and fully shows all assets, liabilities, income and expenses of the Project. All records and books relating to this system shall be kept for a period of at least seven years and in such a manner as to ensure that the records are reasonably protected from destruction or tampering. All records shall be subject to City inspection and audit.

(b) Use of Income from Operations. The Borrower, or its management agent, shall promptly deposit all operating income in a segregated account established exclusively for the Project with an FDIC or other comparable federally-insured financial institution.

5.2 Management Agent; Periodic Reports.

Unless the City approves self management by the Borrower, the Project shall at all times be managed by an experienced management agent reasonably acceptable to the City, with demonstrated ability to operate residential facilities like the Project in a manner that will provide decent, safe, and sanitary housing (as approved, the "Management Agent"). The Borrower shall submit for the City's approval the identity of any proposed Management Agent. The Borrower shall also submit such additional information about the background, experience and financial condition of any proposed Management Agent as is reasonably necessary for the City to determine whether the proposed Management Agent meets the standard for a qualified Management Agent set forth above. If the proposed Management Agent meets the standard for a qualified Management Agent set forth above, the City shall approve the proposed Management Agent by notifying the Borrower in writing. Unless the proposed Management Agent is disapproved by the City within thirty (30) days, which disapproval shall state with reasonable specificity the basis for disapproval, it shall be deemed approved.

5.3 Performance Review.

The City reserve the right to conduct an annual (or more frequently, if deemed necessary by the City) review of the management practices and financial status of the Project. The purpose of each periodic review will be to enable the City to determine if the Project is being operated and managed in accordance with the requirements and standards of this Agreement. The Borrower shall cooperate with the City in such reviews.

5.4 Replacement of Management Agent.

If, as a result of a periodic review, the City determines in its reasonable judgment that the Project is not being operated and managed in accordance with any of the material requirements and standards of this Agreement, the City shall deliver notice to Borrower of its intention to cause replacement of the Management Agent, or, if the Project is being self-managed, to cause the Borrower to retain a Management Agent, including the reasons therefor. Within fifteen (15) days of receipt by Borrower of such written notice, City staff, as applicable, and the Borrower shall meet in good faith to consider methods for improving the financial and operating status of the Project, including, without limitation, replacement of the Management Agent.

If, after such meeting, City staff, as applicable, recommends in writing the replacement of the Management Agent, Borrower shall promptly dismiss the then Management Agent, or cease self-management if the Project is self-managed and shall appoint as the Management Agent a person or entity meeting the standards for a Management Agent set forth in Section 5.2 above and approved by the City pursuant to Section 5.2 above.

Any contract for the operation or management of the Project entered into by Borrower shall provide that the contract can be terminated as set forth above. Failure to remove the Management Agent or to appoint a Management Agent instead of self-management in accordance with the provisions of this Section shall constitute default under this Agreement, and the City may enforce this provision through legal proceedings as specified in Section 6.8.

5.5 Approval of Management Policies.

The Borrower shall submit its written management policies with respect to the Project to the City for its review, and shall amend such policies in any way necessary to ensure that such policies comply with the provisions of this Agreement.

5.6 Property Maintenance.

The Borrower agrees, for the entire Term of this Agreement, to maintain all interior and exterior improvements, including landscaping, on the Property in good condition and repair (and, as to landscaping, in a healthy condition) and in accordance with all applicable laws, rules, ordinances, orders and regulations of all federal, state, City, municipal, and other governmental agencies and bodies having or claiming jurisdiction and all their respective departments, bureaus, and officials. The Borrower shall make all repairs and replacements necessary to keep the improvements in good condition and repair.

ARTICLE 6 MISCELLANEOUS

6.1 Lease Provisions.

The Borrower shall use a form of Tenant lease approved by the City for Assisted Units. The form of Tenant lease shall also comply with all requirements of this Agreement and shall include the following provisions for the Assisted Units:

(a) provide for termination of the lease and consent by the Tenant to immediate eviction for failure: (1) to provide any information required under this Agreement or reasonably requested by the Borrower to establish or recertify the Tenant's qualification, or the qualification of the Tenant's, for occupancy in the Project in accordance with the standards set forth in this Agreement, or (2) to qualify as a Low or Very Low-Income Household, as a result of any material misrepresentation made by such Tenant with respect to the income computation or certification; and

(b) be for an initial term of not less than one (1) year, and provide for no Rent increase during such year. After the initial year of tenancy, such lease may be month to month by mutual agreement of the Borrower and the Tenant; however the Rent may not be raised more often than once a year. The Borrower will provide each Tenant at least sixty (60) days' written notice of any increase in Rent applicable to such Tenant, and with such further notice as may be required by Section 2.3 above.

(c) provide that any termination of a lease or refusal by the Borrower to renew a lease, with the exception of evictions or non-renewals for non-payment of rent, must be preceded by no less than thirty (30) days written notice to the Tenant by the Borrower specifying the grounds for the action.

6.2 Nondiscrimination.

Except as specified herein, all of the Units shall be available for occupancy on a continuous basis to members of the general public who are income eligible. The Borrower shall not give preference to any particular class or group of persons in renting or selling the Units, or

any part of the Project except to the extent that the Units are required to be leased to Low Income Households. There shall be no discrimination against or segregation of any person or group of persons, on account of race, color, creed, religion, sex, sexual orientation, marital status, national origin, source of income (e.g., SSI), age, ancestry, or disability, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of any Unit or in the use or enjoyment of the Project, nor shall the Borrower or any person claiming under or through the Borrower, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees of any Unit or any part of the Project or in connection with the employment of persons for the rehabilitation, operation and management of any Project.

6.3 Section 8 Certificate Holders.

The Borrower will accept as Tenants, on the same basis as all other prospective Tenants, persons who are recipients of federal certificates for rent subsidies pursuant to the existing housing program under Section 8 of the United States Housing Act, or its successor. The Borrower shall not apply selection criteria to Section 8 certificate or voucher holders that are more burdensome than criteria applied to all other prospective Tenants, nor shall the Borrower apply or permit the application of management policies or lease provisions with respect to the Project which have the effect of precluding occupancy of Units by such prospective Tenants.

6.4 Term.

The provisions of this Agreement shall apply to the Property for the entire Term even if the Loan is paid in full prior to the end of the Term. This Agreement shall bind any successor, heir or assign of the Borrower, whether a change in interest occurs voluntarily or involuntarily, by operation of law or otherwise, except as expressly released by the City. The City makes the Loan on the condition, and in consideration of, this provision, and would not do so otherwise.

6.5 Compliance with Loan Agreements and Program Requirements.

Borrower's actions with respect to the Project and the use of funds provided herein shall at all times be in full conformity with all requirements of the Loan Agreement.

6.6 Notice of Expiration of Term.

At least six (6) months prior to the expiration of the Term the Borrower shall provide by first-class mail, postage prepaid, a notice to all Tenants in City Assisted Units containing (a) the anticipated date of the expiration of the Term, (b) any anticipated Rent increase upon the expiration of the Term, (c) a statement that a copy of such notice will be sent to the City, and (d) a statement that a public hearing may be held by the City on the issue and that the Tenant will receive notice of the hearing at least fifteen (15) days in advance of any such hearing. The Borrower shall also file a copy of the above-described notice with the Housing Officer of the City.

6.7 Covenants to Run With the Land.

The City and the Borrower hereby declare their express intent that the covenants and restrictions set forth in this Agreement shall run with the land, and shall bind all successors in title to the Property, provided, however, that on the expiration of the Term of this Agreement said covenants and restrictions shall expire. Each and every contract, deed or other instrument

hereafter executed covering or conveying the Property or any portion thereof, shall be held conclusively to have been executed, delivered and accepted subject to such covenants and restrictions, regardless of whether such covenants or restrictions are set forth in such contract, deed or other instrument, unless the City expressly releases such conveyed portion of the Property from the requirements of this Agreement.

6.8 Enforcement by the City.

If the Borrower fails to perform any obligation under this Agreement, and fails to cure the default within thirty (30) days after the City has notified the Borrower in writing of the default or, if the default cannot be cured within thirty (30) days, fails to commence to cure within thirty (30) days and thereafter diligently pursue such cure and complete such cure within ninety (90) days, the City shall have the right to enforce this Agreement by any or all of the following actions, or any other remedy provided by law:

(a) Calling the Loan. The City may declare a default under the Note, accelerate the indebtedness evidenced by the Note, including outstanding principal and interest, and demand immediate repayment thereof. Upon failure to repay such accelerated amount in full, the City may proceed with a foreclosure in accordance with the provisions of the Deed of Trust and State law regarding foreclosures.

(b) Collect Rents. Collect all rents and income in connection with the operation of the Project and use the same and the reserve funds for the operation and maintenance of the Project.

(c) Excess Rents. In the event that the breach or violation involves the rents to tenants or other charges in excess of those permitted under this Agreement, the City may demand, and seek as an additional remedy, the return of such excess rents or other charge to the affected households.

(d) Action to Compel Performance or for Damages. The City may bring an action at law or in equity to compel the Borrower's performance of its obligations under this Agreement, and/or for damages, or for the appointment of a receiver to take over and operate the Project in accordance with the terms of this Agreement or for such other relief as may be appropriate.

(e) Remedies Provided Under Loan Agreement. The City may exercise any other remedy provided under the Loan Agreement.

(f) Remedies Cumulative. The remedies of the City hereunder are cumulative, and the exercise of one or more of such remedies shall not be deemed an election of remedies and shall not preclude the exercise by the City of any one or more of its other remedies.

6.9 Attorneys Fees and Costs.

In any action brought to enforce this Agreement, the prevailing party shall be entitled to all costs and expenses of suit, including reasonable attorneys' fees. This section shall be

interpreted in accordance with California Civil Code Section 1717 and judicial decisions interpreting that statute.

6.10 Recording and Filing.

The City and the Borrower shall cause this Agreement, and all amendments and supplements to it, to be recorded in the Official Records of the County of Santa Clara.

6.11 Governing Law.

This Agreement shall be governed by the laws of the State of California.

6.12 Waiver of Requirements.

Any of the requirements of this Agreement may be expressly waived by the City in writing, but no waiver by the City of any requirement of this Agreement shall, or shall be deemed to, extend to or affect any other provision of this Agreement.

6.13 Amendments.

This Agreement may be amended only by a written instrument executed by all the parties hereto or their successors in title, and duly recorded in the real property records of the County of Santa Clara.

6.14 Notices.

Any notice requirement set forth herein shall be deemed to be satisfied three (3) days after mailing of the notice first-class United States certified mail, postage prepaid, addressed to the appropriate party as follows:

Borrower: MP Homestead Park Associates
303 Vintage Park Drive, Suite 250
Foster City, CA 94404
Attn: PRESIDENT

City: City of Sunnyvale
P.O. Box 3707
Sunnyvale, CA 94088-3707
Attention: Housing Officer

With a copy to Trustor's investor limited partner: (AEGON)

Bay Area Community Investments I, LLC
c/o AEGON USA Realty Investors, LLC
4333 Edgewood Road NE
Cedar Rapids, IA 52499
Attention: LIHTC Reporting
Facsimile: 319-355-8030
Email: lihtcreporting@aegonusa.com

Such addresses may be changed by notice to the other party given in the same manner as provided above.

6.15 Severability.

If any provision of this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions of this Agreement shall not in any way be affected or impaired thereby.

6.16 Multiple Originals; Counterparts.

This Agreement may be executed in multiple originals, each of which is deemed to be an original, and may be signed in counterparts.

6.17. Captions. The captions used in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or the intent of this Agreement.

6.18. Assignment of City's Rights. The City retains the right, at its sole discretion, to assign all or part of its rights under this Agreement for the purpose of ensuring compliance and enforcement of the Borrower's duties and obligations hereunder. In addition, the City may designate an agent to act on its behalf in monitoring compliance and enforcing the provisions hereof.

6.19. Binding on Successors. This Agreement shall bind, and benefits thereof shall inure to, the respective parties hereto, their legal representatives, executors, administrators, successors in interest, and assigns, provided, however, that the Borrower may not assign this Agreement or any of its obligations hereunder, voluntarily or by operation of law, without the prior written approval of the City.

6.20. Hold Harmless. Absent the gross negligence or willful misconduct of the City, the Borrower and its successors in interest agree to indemnify, defend, and hold harmless the City and its respective agents, employees and officers from any and all claims, losses, liabilities or causes of action (including reasonable attorneys' fees) arising from or in connection with the Borrower's rehabilitation, management, maintenance or operation of the Project.

6.21. Restrictions on Sale, Encumbrance, and Other Acts.

(a) Except for leases to tenants in the ordinary course of business, the Borrower shall not make, or allow, any sale, encumbrance, hypothecation, assignment, pledge, conveyance, or transfer in any form of the Project or of any of its interest therein, except with the prior written approval of the City.

(b) The City may approve a sale, transfer or conveyance provided that all of the following conditions are met:

(1) the Borrower is in compliance with this Agreement or the sale, transfer or conveyance will result in the cure of any existing violations of the Agreement;

(2) the successor-in-interest to the Borrower agrees to assume all obligations of the Borrower pursuant to this Agreement;

(3) any terms of the sale, transfer or conveyance shall not threaten the City's security or repayment of the Loan; and

(4) any successor-in-interest demonstrates to the City's satisfaction that it has the management and financial capacity to own and operate the Project.

6.22 Judicial Reference. It is the desire and intention of the parties to agree upon a mechanism and procedure under which any claim, controversy, breach or dispute arising out of this Agreement, including, without limitation, the interpretation of any term or provision of this Agreement, or any claim, controversy, breach or dispute arising out of the work, services or obligations performed under a this Agreement, including, without limitation, the design, specifications, surveying, planning, supervision, testing, or observation of construction or construction of an improvement to, or survey of, the Project, (individually, referred to as a "Dispute", and collectively referred to as "Disputes") will be resolved in a prompt and expeditious manner. Accordingly, all or any such Disputes, whether seeking damages or equitable relief, shall be subject to the procedures set forth in this section. Any unresolved Disputes shall be heard by a referee pursuant to the provisions of the California Code of Civil Procedure, Sections 638-645.1, inclusive, and as set forth in this section:

6.22.1 Procedure for Appointment. The venue of any proceeding brought under this section shall be in Santa Clara County, California (unless changed by order of the referee). The party seeking to resolve the Disputes shall file in court and serve on the other party a complaint describing the matters in dispute. Service of the complaint shall be as prescribed by law. At any time after service of the complaint, any party may request the designation of a referee to try the dispute. Thereafter the parties shall use their best efforts to agree upon the selection of a referee. If the parties are unable to agree upon a referee within ten (10) days after a written request to do so by any party, then any party may petition the presiding judge of the superior court in which the action is filed or the superior court judge to whom the matter has been assigned (the "Judge") to appoint a referee. For the guidance of the Judge making the appointment of the referee, the parties agree that the person so appointed shall be a retired judge or a lawyer experienced in the subject matter of the dispute.

6.22.2 Appointment of Proposed Referee as Judge Pro Tem. In recognition that (1) there is no action pending as of the date of this Agreement in which the parties thereto can stipulate to the appointment of a temporary judge, (2) there is no statute authorizing such a stipulation in advance of the filing of an action in the superior court, and (3) the appointment of a referee as a temporary judge ("judge pro tem") under Article VI, Section 21 of the California Constitution and California Rules of Court Rule 244, would be preferable to a general reference, the parties hereby covenant that in the event of the filing of an action in the superior court to resolve all or any disputes, the parties thereto shall use their best efforts to stipulate that the proposed referee be

appointed as a temporary judge under Article VI, Section 21 of the California Constitution.

- 6.22.3 Decision and Jurisdiction of Referee. The referee or judge pro tem shall decide all issues of fact and law submitted by the parties for decision in the same manner as required for a trial by court, including all law and motion matters, ex parte matters and discovery disputes. The referee or judge pro tem shall try and decide any or all Disputes according to all of the substantive, evidentiary and procedural law of the State of California. When the referee or judge pro tem has decided the Disputes, the referee or judge pro tem shall prepare a statement of decision and judgment. The judgment entered by the Superior Court shall be appealable in the same manner as any other judgment.
- 6.22.4 Discovery. Discovery shall be allowed and conducted under the supervision of the referee or judge pro tem pursuant to the provisions of the California Code of Civil Procedure and the California Rules of Court.
- 6.22.5 Cooperation. The parties shall diligently cooperate with one another and the person appointed as referee or judge pro tem to resolve each and every Dispute and shall perform such acts as may be necessary to obtain a prompt and expeditious resolution of all such Disputes. If either party refuses to diligently cooperate, and the other party, after first giving notice of its intent to rely on the provisions of this subparagraph, incurs additional expenses or attorneys' fees solely as a result of such failure to diligently cooperate, the referee or temporary judge may award such additional expenses and attorneys' fees to the party giving such notice, even if such party is not the prevailing party in the dispute.
- 6.22.6 Allocation of Costs. The cost of the reference shall be borne equally by City and Borrower.
- 6.22.7 Special Disclosure. Notice: By signing this Agreement, Borrower and City agree to have all and any Disputes decided by judicial reference in accordance with California Code of Civil Procedure, Sections 638-645.1, and Borrower and City are giving up any rights Borrower and City might possess to have the Dispute litigated by a jury trial. If Borrower or City refuses to submit to judicial reference after agreeing to this provision, such party may be compelled to submit to judicial reference. The parties' agreement to this judicial reference provision is voluntary.

IN WITNESS WHEREOF, the City and the Borrower have executed this Agreement by duly authorized representatives, all on the date first written above.

MP HOMESTEAD PARK ASSOCIATES
a California Limited Partnership

By: MP Preservation, Inc., a California nonprofit
public benefit corporation, Its General Partner

By: Matthew O. Franklin
Its: ASSISTANT SECRETARY

CITY:

CITY OF SUNNYVALE, a municipal
corporation

APPROVED AS TO FORM:

By: _____
City Attorney

By: _____

Its: _____

STATE OF CALIFORNIA)
)
COUNTY OF _____)

On _____, before me, _____, Notary Public, personally appeared _____, proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public

STATE OF CALIFORNIA)
)
COUNTY OF _____)

On _____, before me, _____, Notary Public, personally appeared _____, proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public

EXHIBIT A

Legal Description of Project

LEGAL DESCRIPTION

Real property in the City of Sunnyvale, County of Santa Clara, State of California, described as follows:

Parcel One:

Lots 1, and 3, so designated and delineated on the Map of Tract No. 5292 Homestead Plaza Subdivision, recorded July 5, 1973, in Book 326 of Maps, pages 1, Santa Clara County Records.

Parcel Two:

Parcel B, as shown upon that certain Parcel Map recorded December 23, 2002 in Book 757 of Maps, Pages 1 and 2, Santa Clara County Records.

APN: 323-41-001 (Affects Lot 1 of Parcel One)

323-41-003 (Affects Lot 3 of Parcel One)

323-41-005 (Affects Parcel Two)

EXHIBIT B

Schedule of Assisted Units

Income Limits	Number of Assisted Units*
50% AMI -Very Low-Income	64
60% AMI - Low-Income	145

*excludes 2 manager units

EXHIBIT E
PROJECT BUDGET

HOMESTEAD DEVELOPMENT BUDGET		
HARD COSTS		
Site Work	\$	181,500
Rough & Finished Carpentry	\$	640,000
Thermal & Moisture	\$	110,000
Doors & Windows	\$	351,462
Finishes	\$	444,935
Furnishings	\$	950,350
Mechanical & Plumbing	\$	895,600
Electrical	\$	1,269,727
General Contractor Overhead & Profit	\$	739,614
Subtotal	\$	5,583,188
Hard Cost Contingency (10%)	\$	484,357
TOTAL HARD COST	\$	6,067,545
SOFT COSTS		
Design	\$	10,000
Construction/Project Management	\$	334,991
Builder's Risk	\$	83,748
Permits	\$	121,351
Legal- Owner's Cost	\$	5,000
Title & Closing	\$	5,000
Land Appraisal	\$	9,000
Resident Expenses	\$	50,000
Soft Cost Contingency (5%)	\$	28,454
TOTAL SOFT COST	\$	647,544
TOTAL PROJECT COST	\$	6,715,089

HOMESTEAD DEVELOPMENT BUDGET SOURCES		
Sources		
City of Sunnyvale Housing Mitigation Funds*	\$	5,000,000
CA Solar Initiative-Thermal**	\$	500,000
Homestead Property Replacement Reserve/MidPen Loan	\$	1,215,089
TOTAL SOURCES	\$	6,715,089

*City of Sunnyvale HMF commitment for \$5 MM is contingent on a 25% match of property reserves or other sources

**Over the counter rebate program for expenses related to solar thermal.

No funding commitment needed.

EXHIBIT F
SCOPE OF WORK

Homestead Park Renovation Scope of Work

April 16, 2013

Originally constructed in 1973, Homestead Park is in need of renovation to modernize the property, improve energy usage and address critical repairs. MidPen is proposing exterior rehabilitation of the remaining buildings still in need of this work, site work improvements and interior upgrades.

Exterior Renovations (Buildings A, G, H, I, K, V, X, Y, Z and laundry room) – most of the buildings at the property have had the following exterior work completed in previous phases to modernize and improve energy efficiency. The remaining buildings are essentially in original condition.

- Replace exterior wood siding and trim
- Replace and install new energy-efficient vinyl windows and new blinds
- Replace all sliding glass doors with double-pane
- Replace exterior front doors and utility closet doors
- Replace roof, gutters, and downspouts (only 1 building)
- Replace patio wood fencing
- Replace trellises
- Replace exterior lighting to improve site security
- Exterior paint

Site Work

- New drought-tolerant landscape with drip irrigation – will reduce water consumption, a significant utility expenditure at the property
- Replacement of failing gas lines – several emergency repairs have been conducted over the last few years due to failing gas lines; conducting the repairs comprehensively will result in a more efficient process and reduce the disruption to tenants and staff
- Solar Thermal system – solar thermal for hot water will reduce the property's ongoing gas needs
- Fencing work
- Signage improvements

Interior Renovations – proposed for all buildings and focused on energy efficiency improvements and upgrade of items deemed most in need of replacement. This work will likely include the following:

- Install new bathroom exhaust fans
- Replace inefficient wall heaters and forced air units
- Install water-saving fixtures in kitchens and bathrooms (sinks, faucets, bath fixtures, toilets)
- Replace kitchen and bathroom cabinets and counter tops
- Paint in kitchen and bathrooms

Depending on budget, this work may also include:

- Replacement of ranges and range hoods with EnergyStar appliances
- Replacement of kitchen and bathroom flooring
- Replacement of bedroom and living room flooring
- Replacement of bathtubs

ATTACHMENT B

LETTER FROM MIDPEN HOUSING CORPORATION

May 3, 2013

Suzanne Isé
Housing Officer
City of Sunnyvale Community Development Department
456 W. Olive Ave.
Sunnyvale, CA 94088

Re: City of Sunnyvale Housing Mitigation Fund Loan for Homestead Park Rehabilitation

Dear Ms. Isé,

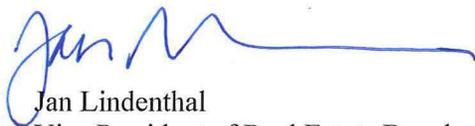
Per your request, this letter provides an explanation of the need for a 0% interest rate for the Housing Mitigation Fund Loan and the triggers which will allow this rate to be adjusted after the investor limited partner is bought out.

Homestead Park is currently in its 15 year tax credit compliance period with its tax credit investor. Once that period expires, another MidPen entity will buy out the interest of the limited partner. Homestead is scheduled to go through buyout in 2016 or 2017. By then, the investor limited partner will have met their obligations and received all the benefits from buying the tax credits. If the investor limited partner's capital account is negative at the time of buyout, MidPen would need to pay exit taxes on the limited partner's behalf. There are number of steps we are taking to reduce the likelihood of exit taxes. One of these methods is to avoid adding new accrued interest on debt prior to buyout as accrued interest is deducted from the capital account.

For this reason, it is essential to have a 0% interest rate in the loan documents for both investor approval of the Housing Mitigation Fund Loan and MidPen's ability to provide matching funds. We have added triggers to the Loan Agreement so that upon buyout, the interest rate can be adjusted to a 3% simple interest rate should the City desire at that time. The language of the term (Section 1.3) and the restrictions on sale, encumbrance or other acts (Section 2.9) that require City approval will allow the City to adjust the interest rate after buyout should they so desire. The transfer of the limited partnership interest, as part of buyout, will be the trigger per Section 1.3. We have also taken out the pre-approval for a transfer to a wholly-controlled affiliate of MidPen Housing in Section 2.9 which means we will need City approval for this transfer. It is the intent of the City that their review of this transfer would be to ensure the City's right to approve an adjustment in the City's loan terms, but not to disapprove of the transfer itself, provided it is to a wholly-controlled affiliate of MidPen.

Please let me know if you have any questions.

Best Regards,



Jan Lindenthal
Vice President of Real Estate Development